21

Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

In the

Supreme Court of the United States

October Term 2002

Joseph R. Caterina, Frances H. Caterina, Emmett Caterina and Clara Caterina,

Petitioners,

v.

Unified Judicial System of The Commonwealth of Pennsylvania & Related Parties; Lackawanna Co. Redevelopment Authority; PA General State Authority; Blakely Borough et al,

Respondents.

On Petition For Writ of Certiorari To The United States Court of Appeals For the Third Circuit

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PETITION FOR A WRIT OF CERTIORARI

Joseph R. Caterina,
Frances H. Caterina,
Emmett Caterina,
Clara Caterina;
All In Pro Se

c/o 202 Kenyon Drive
Peckville, Pa. 18452
(570) 489-8741
(570) 489-6322 # 1

January 21, 2002

131 pp

QUESTIONS PRESENTED FOR REVIEW

1) Was the Petitioners' Due Process Right to Trial by Jury and their Right not to be restrained from their property without probable cause, wrongfully denied when the Appellate Court based its opinion on the belief that the Petitioners were Appealing a Federal Court Case when in fact, it was an appeal from the Pennsylvania Supreme Court ? /1,2

2) Did the District Court err by placing Rules of Court above Petitioners' Constitutional Rights, in violation of long standing antecedent doctrines that Constitutional Rights prevail when there is a conflict ? /3,4,5,6 & 7

/3,4,5,6 & 7
See (ii) & (iii) herein

Foot Notes

fn.1 VI ARGUMENT

"I. Pennsylvania Supreme Court denied a Petition for Reconsideration for Allowance of Appeal in January 1997 and the Appellants timely invoked jurisdiction in both the US Dist Ct MD Pa see (Dkt Entry 1; Apx 3a) entered 18 Feb. 97 and the Supreme Court of the United States; see (Dkt Entry 3; Apx 28a and 48a) entered 17 July 1997, see (Dkt Entry 6, Apx 134a and 148a) entered 17 July 1998; as filed in said Court 15 April 1997." see (A-33) here in cite: INFORMAL BRIEF BY APPELLANTS USCA, 3rd Cr Appeal No. 99-3793 VI ARGUMENT Sec I(A-33)

fn.2

" The Caterinas' request for reconsideration did not identify any reasons justifying (bot p 3) relief from the District Court's prior orders. Rather, the Caterinas contend that their petition for writ of certiorari, stemming from a separate District Court proceeding and pending in the United States Supreme Court, somehow relieved them of the time requirements for effecting service. This argument is unpersuasuve." (emphasis added) see (A-20) herein cite: OPINION 25 July 2001 USCA, 3rd Cr No. 99-3793 Unreported-Not Precedential (A-20)

fn.3

"In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction." (emphasis added) see (A-8) herein.
cite: FRAP Rule 2 Suspension of Rules title 1

fn.4

"(6) Implicit in this appeal is the right of a court to promulgate rules and to interpret them as adjuncts to dispensation of justice and the

orderly and expedient administration of its function, with limitation that substantial rights of litigants be not unduly circumscribed." (emphasis added) see (A-9,A-10) herein.
cite: S. Stern & Co. v United States;331 F 2nd 310, p. 314 (6), (1963)

fn.5
" (b) . . . unless it appears that the applicant has exhausted the remedies available in the courts of the State . . . . or the existence of circumstances rendering such process ineffective to protect the rights of the . . ."
(emphasis added)
cite: 28 USC § 2254(b) State custody; remedies in Federal courts

fn.6
"Where rights secured by the Constitution are involved, their can be no rule making or legislation which abrogate them." (emphasis added)
cite: Ernesto A. Miranda v State of Arizona,348 US 433; 86 Sup Ct Rpt 1602; n73 p 1608

fn.7
"I mean the trial by jury 'Let us not forget that trial by jury, in all cases in which it has been formerly used, should remain inviolate forever, and that the legislature should at no time erect any new jurisdiction which should not proceed according to the course of the common law. . . "
cite: Cummings v. State of Missouri, 71 U.S. 277 (1866); 71 U.S. 277 (Wall.) Dec Term 1866,last 2 p

fn.8
"Due process of the law means going through the entire process leading up to a trial by jury, without any 'short cuts.' This was decided in the celebrated case, Cummings v. State of Missouri, Congressional Record, Senate, Feb. 16, 1882, pages 1195-1209. (emphasis added) cite U.S. Constitution and Bill of Rights by Dr. John Colemen Vol1,p131

LIST OF PARTIES

Condemnees, Petitioners:
Joseph R. Caterina and Frances H Caterina
Emmett Caterina and Clara Caterina, Pro Se
c/o 202 Kenyon Dr., Peckville, PA. 18452
phone (570) 489-8741 home, 489-6322 nights
petitioners represented if granted by:
Atty. _____

Phone ( ) FAX

Condemnors & Related Parties, Respondents

Atty. Harry T. COLEMAN, Esq., Atty. Edwin A. ABRAHAMSEN, Esq./ Abrahamsen, Moran & Conaboy, 205-207 N. Washington Ave., 2nd Fl., W.C. Carter Bldg., Scranton, PA. 18503 Phone (570) 348-0200, Represents the following Respondents:
Blakely Borough, 1439 Main St., Peckville, Pa. 18452

Atty. (M. Colleen Foley CANOVAS)., Atty. Thomas J. FOLEY, Jr., Esq./Foley, McLane, Nealon, Foley & McDonald, P.C., 600 Linden Plaza, Scranton, PA. 18501-1108, Phone

(570) 342-8194, Represents the following Respondent:
Lackawanna County Redevelopment Authority, 200 Adams Ave., Scranton, PA. 18503

Atty. Elizabeth A. O'REILLY ID# 48519, Atty. Catherina A. FOLEY ID# 63814, Atty. Jose E. MORALES ID# 31890, for Dept. General Services; c/o 603 North Office Building, Harrisburg, Pa. 17125 and Atty. Gregory C. SANTORO, for General State Authority, Phone (717) 787-5599, Represents the following Respondents:
The General State Authority of PA and the Dept. of General Services of PA, c/o 603 North Office Building, Harrisburg, PA, 17125; Phone (717) 787-5599

Atty. Mike FISHER Attorney General of PA., c/o Atty. Calvin R. KOONS Senior Deputy Attorney General Appellate Litigation Section, 15th Fl., Strawberry Square, Harrisburg, PA. 17120, Phone (717)783 -6709, Represents the following Respondents:
Commonwealth of Pennsylvania, Attorney General Office, 1515 Strawberry Square, Harrisburg, PA. 17108; FAX (717)772 -4526

Atty. Thomas B. HELBIG, Esq., 1000 Bank Towers Bldg., Scranton, PA. 18503, Phone 570) 346-7651/ Scanlon, Howley, Scanlon & Doherty, 321 Spruce St., Scranton, PA 18503, Represents the following Respondent: Lackawanna County a non-Party
200 Adams Ave., Scranton, PA., 18503

Unified Judicial System of the Commonwealth of Pennsylvania c/o Supreme Court of PA., Rm. 434 Main Capitol Bldg., Harrisburg, PA 17120, Phone (717) 787-6181, Represents ? the following Respondent:
Unified Judicial System of the Commonwealth of Pennsylvania as per 42 Pa.C.S.A. § 301 Judiciary, Unified Judicial System, address unknown and no listed telephone or FAX.

Judge John Cottone, J. and Judge Walsh,? c/o Lackawanna County Courthouse Prothonotary: Cv No. 60046-1996, Equity; and In Rem No. 1976 Year 1993; Washington Ave., Scranton, PA 18503, Represents the following Respondent:
Lackawanna County Court System, c/o Lackawanna Courthouse, Scranton, PA., 18503 , Phone (570) 963-6752; (570) 963-6765

BASIS FOR JURISDICTION IN THE COURT

This Court's Jurisdiction is invoked under 28 U.S.C. § 1254(1). see (A-22) and (A-17) herein

This Writ of Certiorari pursuant to Supreme Court Rule 10(c), wherein the Third Circuit USCA has decided an Important Federal Question in a way that is indifferent and which conflicts with revelant decisions of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED
CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT: The Right of the People to be Secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated.

FIFTH AMENDMENT: Nor be deprived of Life, Liberty, or Property without due process of law.

SEVENTH AMENDMENT: In suits at Common Law where the value in controversy shall exceed Twenty dollars, the Right of Trial by Jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the Rules of Common Law.

NINTH AMENDMENT: The enumeration in the Constitution of certain rights, shall be not construed to deny or disparage others retained by the people.

TENTH AMENDMENT: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

FOURTEENTH AMENDMENT: . no state shall . deprive any person of Life, Liberty, or Property, without due process of law; nor deny . . the equal protection of the laws.

ARTICLE IV, SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State . . .

FEDERAL STATUTES

28 USC § 1738 : full faith and credit
28 USC § 2072(b) Ch 131: rules not abridge
28 USC § 2254(b) custody,remedies,exhaust
FRCP Rule 4, Local Rule 4.1: process 120 days
FRAP Rule 2, Suspension of Rules, title 1

US SUP CT CASE LAW

S. Stern & Co. v U.S.;331 F 2nd 310,p314(6)
Ernesto A. Miranda v State of Arizona,348 US 433; 86 Sup Ct Rpt 1602; n 73 p 1608
Cummings v State of Missouri,71 US 277(1866) 71 U.S. 277(Wall.) Dec Term 1866,last 2 pgs

STATEMENT OF THE CASE

The Appellate Court in reviewing the District Ct's denial erred. Petitioners timely filed Appeals from the Penna. Sup Ct. /1, in both the Dist Ct & the US Sup Ct (A-65),(A-33).

The Appellate Ct wrongfully cited that, ". . their petition for writ of certiorari, stemming from a separate District Court proceeding and pending in the US Sup Ct ". /2 This is <u>not</u> so! Said Writ of Cert stemmed from the Supreme Court of Penna./2 requiring the exhausting of Statutory Remedies, which required Petitioners to exhaust all remedies before proceeding in the US District Court MD Pa (A-96) & (A-100), requiring the suspension of <u>FRCP Rule 4</u> and <u>Local Rule 4.1</u>./3,4,5 & 6

The Appellate Ct in their opinion (A-17, A-22) failed to consider the Petitioners' <u>inability to comply</u> with the Dist Ct Order 24 June 1977 (A-101, A-102) because of their Pending Case and refused to consider <u>FRAP Rule 2</u>,/3 contrary to US Sup Ct precedents: <u>S. Stern & Co v U.S.</u>,/4; <u>Miranda v Arizona, n73</u>,/6; & <u>Cummings v State of Missouri</u>,/7.

The Appellate Court's error suspended the Petitioners' Rights instead of the Rule & thereby denied their Right to Trial by Jury, not to be restrained from their own property without probable cause,/5.

ARGUMENT

There is no question that Rules must give way in the face of the exercise of a Constitutional Right! Said Rules may not be applied to deny a Constitutional Right! (A-10)

Petitioners are being restrained from their own property w/o probable cause (A-48, 57, A-67,76) or proper service, and Ex Parte, and had to exhaust all Statutory Remedies under 28 USC § 2254(b). /5

Petitioners have right to trial by jury, under the 7th Amendment,(A-66,A-63,64) being denied access to their property by a restraining order.

Petitioners exhausted their statutory remedy from the Penna. Supreme Ct Action. (A-65)/1, (A-94).

Clearly the 3rd Circuit erred in stating: "their petition for writ of certiorari, stemming from a separate District Court proceeding in the US Sup Ct ."(A-20)/2,(A-33)/1, (A-98 /1) when it stemmed from a state Ct. proceeding.

Long established doctrines bar two separate proceedings on the same issues, which supports Petitioners' inability to comply with the Dist Court's Order (A-101,102), see also (A-3,16) (A-84,85) (A-96,97)(A-100).

FRAP Rule 2 (A-8)/3, should have been applied for Petitioners' good cause shown, (A-9,10)/4,6

The Standard of Review was an abuse of

discretion by obstructing the doctrine of exhaustion, (A-4,5,)/[8] (A-6,7).

Order 22 July 1997 (A-98) must be reversed/[1] for it supports Petitioners' position that the 3rd Circuit erred. The Dist Ct wrongfully stated the US Sup Ct Writ of Cert provides no basis for failure to comply(A-7,8).

The granting of Cert was <u>not</u> crucial, but exhausting the Statutory Remedy was vital. (A-80,81)/[8].

The Order 27 Aug 1999 (A-82,83) must be reversed, as the Petitioners can not file another case. see/* note order, (A-58,62)

The 3rd Circuit & USDC MD Pa. decisions are in conflict with the Tenth Circuit under the doctrines of <u>res judicata</u>, <u>collateral estoppel</u> & <u>Law of the Case</u>.*(A-23,25)(A-12,14)

Clearly the case is meritorious.(A-28,33)

Contrary to the Attorney General's statement there <u>is</u> a Unified Judicial System & General State Authority (A-77,78,79).

All of the above clearly supports the Petitioners' Brief, (A-27,47 incl).

CONCLUSION

Petitioners seek reversal of both lower Courts for the Rules of Court can not prevail over their Constitutional Rights,(A-11, 15)/[7]. All motions in interconnected Appeals #s 99-3689, 99-3690 be reversed also. **

<u>Date 21 Jan 2002</u> by Joseph Caterina, Frances Caterina, Emmett Caterina(Clara Deceased)

**(to file Sup Brief, Sup Apx, incorp Dkt' Entry 29 into the record, Oral argument;)as is necessary to this case.

Respectfully submitted

Joseph R. Caterina

Joseph R. Caterina, In Pro Se

Frances H. Caterina

Frances H. Caterina, In Pro Se

Emmett Caterina

Emmett Caterina, In Pro Se

Clara Caterina deceased 6/30/01

Date: 21 January 2002

Note: Please be advised should the Court grant said Writ requiring further presentation or oral argument that we will make every effort to be represented by Counsel.

Thank you

Original Signatures

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Supreme Court of the United Sta-tes filed 24 Sept 2001 - Appli-cation For an Extension of Time To File a Writ of Certiorari to Associate Justice David H.

Souter In The Supreme Court of The United States * (Appeal # 3)

Note: Filed USDC, MD Pa No. 3: MI-01-0189 31 Oct 2001 Scranton see (A-58) herein A-104

Supreme Court of the United States Application No. 01A286 filed 27 September 2001, Time Extended to an including 21 Jan 2002

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Note: reference herein bottom (A-81) citing US Sup Ct No 00-1390 (A-12) fn.1 Rehearing Denied A-109

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THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-3793

Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, Clara Caterina,
Appellants

v

Unified Judicial System of the Commonwealth of Pennsylvania and Related Parties; Lackawanna County Redevelopment Authority;PA. General State Authority; Blakely Borough

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Before: ALITO, AMBRO,and ROSENN Cir. Judges

SUR PETITION FOR PANEL REHEARING

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court and no judge who concurred in the decision having asked for rehearing, the petition for panel rehearing is DENIED.

By the Court:
s/s D---- L. Alito ?
Circuit Judge

Dated: Aug 24 2001
lmc/cc: Mr. JRC
Ms. FC
Mr. EC
Ms. CC
TBH

(1)

*see (A-2) herein

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 99-3793

Joseph R. Caterina, Frances Caterina, Emmett Caterina, Clara Caterina,
Appellants/ Petitioners

v

Unified Judicial System of the Com of PA. and Related Parties; Lackawanna Co Redevelopment Authority; PA General State Authority; Blakely Borough, et al
Appellees/Respondents

PETITION FOR A PANEL REHEARING
(By Panel Not Em Banc)

On Order Per Curiam United States Court of Appeals, for the Third Circuit dated (filed 25 July, 2001) and Opinion as Submitted under Third Circuit LAR 34.1 (a) July 6, 2001.
Before: ALITO, AMBRO and ROSENN, Circuit Judges

On Appeal from the United States District Court for the Middle District of PA
(M.D. Pa. Civ. No. 97-cv-00242)
District Judge: Honorable Wm. W. Caldwell

PETITIONERS In Pro Se
c/o Joseph R. Caterina
202 Kenyon Drive
Peckville, PA 18452
(570) 489-8741

Date: 6 August 2001

cover

Note: Filed with USDC,MD Pa No. 3:MI-01-0189 Scranton Oct 31, 2001. see (A-58) herein

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 99-3793

Joseph R. Caterina, Frances Caterina, Emmett Caterina and Clara Caterina;
Petitioners

v

Unified Judicial System of the Com of PA. and Related Parties; Lackawanna Co Redevelopment Authority; PA General State Authority; Blakely Borough & Related Parties;
Respondents

PETITION FOR A PANEL REHEARING
(By Panel Not Em Banc)

Come now the Petitioners, above named to Petition this Honorable Court for a Rehearing by Panel in the above entitled case under 28 USC § 2072(b), 28 USC § 2071(c)(1) of Federal Rules of Civil Procedure and FRAP Rule 2 as referenced FRAP 26(b) of Federal Rules of Appellate Procedure.

Petitioners move this honorable Court to take Judicial Notice in addition to the rules above referenced to the fact that one can not move in two courts on the same case at the same time ! fn.1

fn.1 Judicial Notice that Petitioners inability to comply with Order due to the fact that Petitioners could not move in two Courts on the same case at the same time governed their compliance.

Therefore Petitioners were unable to comply with US District Judge Wm W. Caldwell's Order dated June 24, 1997;(Dkt Entry 2, Apx p 16a,17a) as filed June 24, 1997; & the Petitioners petition this Court to suspend, modify or abrogate FRCP Rule 4, for effective service & US Dist Ct Local Rule 4.1, as to timeliness & perfection of service inorder to protect Petitioners' Right to Appeal/fn.2, Right to Jury Trial/fn.3, Right Not to be restrained without Probable Cause/fn.4, by a Court that lacks Jurisdiction because of the Doctrine of Collateral Estoppel & Res Judicata, the Right to Due Process/fn.5, & Not Dual Process of Law depriving Plaintiffs of their perfected rights under said Constitution of the United States so as to protect the Petitioners' Right to Appeal Under 28 USC § 1291 and to enable the protection of the rights and privileges of the Petitioners herein.

The misapplication of the Standard of Review was an abuse of disretion and it should not have been applied by the Dist Court or by the Appellate Court in the manner that it was because of the Courts

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fn.2 Right to redress grievances- 1st Amend Const. of U.S.
fn.3 7th Amend. Const. of U.S.
fn.4 4th Amend. Const. of U.S.
fn.5 5th Amend. Const. of U.S.

own well established Doctrines of 'Pendente Lite' & 'Lis Pendens' as the Petitioners were in both Courts at once and needed to rely upon the Supreme Court of the United States final Order in order to proceed in the District Court wherein it is Common knowledge that these doctrines are in place so as not to deny Plaintiffs of relief and to support the Constitution of the United States as these long established antecedent doctrines were 'violated' upon review!

(2)

Federal Rule of Civil Procedure Rule 4 and US Dist Ct Local Rule 4.1 should be suspended as they have abridged the Petitioners Substantive Rights under 28 USC § 2072(b) and 28 USC § 2071(c)(1) as follows:

"(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect."(Emphasis added 28 USC § 2072(b),Chp 131 FRCP Rules of Ct.

&"(c)(1) A rule of a district court prescribed under subsection (a) shall remain in effect, unless modified or abrogated by the judicial council of the relevant circuit." (Emphasis added)
28 USC § 2071(c)(1),Chp 131 FRCP Rules of Ct.

Petitioners contend that FRCP Rule 4 and US Dist Ct Local Rule 4.1 did in fact abridge their Substantive Rights as were perfected; Right to Jury Trial, Right Not to be Restr-

ained without Probable Cause by a Court that lacks Jurisdiction because of the Doctrine of Collateral Estoppel, the Right to Due Process of Law under the Constitution of the United States and Not Dual Process of Law & the Right to Exhaust their Statutory Remedy, (Supra p.2), for the following reasons:

(1) Compliance with the US Dist Ct Order would have compromised & harmed, prematurely, the Petitioners' Cause of Action before the Exhaustion of their Staturoty Remedy.

(2) Petitioners request this Court to take Judicial Notice the 'Inability to Comply with a Court Order' is a proper defense.

(3) Petitioners had to rely upon & await the final Crder of the Supreme Court of the United States before proceeding in their Pending Case in the District Court so as to have a continum of Due Process of Law & not two separate proceedings on the same issues, the same transactions & occurances & under the 'Doctrine of Exhaustion of Remedies' had to await final adjudication from the Supreme Court of the United States:

(3)

"Plaintiff must Exhaust All Required Administrative Remedies before bring claim for Judicial relief."
Robinson v Dalton, 107 F.3d,1018(CA3rd) (PA) 1977

&"The doctrine of 'Exhaustion of Administrative Remedies' applies when claim is co-

gnizable in the First instance by an Administrative Agency alone & Judicial interference is witheld until the administrative process has run its course."
United States vs Radio Corp. of America, 79 S. Ct. 457; 358 U.S. 334; 3 L.Ed. 354 (U.S. PA, 1959)

&"28 USC § 2254(b) and 28 USC § 2254(c), (Exhaustion of all Remedies)"; apply as Petitioners are being restrained without probable cause by a Court that lacks jurisdiction. (Doctrines of Collateral Estoppel & Res Judicata apply).

&"Exhaustion is not complete unless the Trial Court of State intermediate Appellate Court (if Applicable), and the Highest State Court; here the Supreme Court of Pa.; have been presented with substance of Petitioner's claims."
Evans v Court of Common Pleas, 959 F.2d 1227, 1230,(3d Cir.) 1992

The 'Doctrine of Exhaustion' equally applies to Judicial Remedies & Statutory Remedies as well. Petitioners had to Exhaust their Statutory Remedy so as to perfect their substantive rights and privileges before their case could go forth in the Dist Ct as per 'Motion For Clarification' as filed 17 July 1998 USDC, MDPa Scranton Apx p 125a, (Dkt Entry 5) see xxxvii brief; (Notice Exhaustion of Remedy).

Plaintiffs were neither negligent nor disrespectful of the US Dist Ct. Orders, but! were simply doing their best to comply with the Rules as they understood them to apply to their case & Plaintiffs believe

that 'Inability to Comply' provides ample reason to waive said Rules.

(4) Petitioners have now Exhausted their Statutory Remedy & can proceed with their case in a continuum single Due Process without a new action as they are being restrained from entry upon their land which has been seized by Defendants without Probable cause by a Court that lacks Jurisdiction under Collateral Estoppel & Res Judicata.

Petitioners further contend that FRCP Rule 60(b) along with FRCP Rule 4 & US Dist

Ct. Local Rule 4.1, should also be suspended for the same hereinabove indicated 'Good Cause' under FRAP Rule 2:

> "In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction." (Emphasis added)
> FRAP Rule 2 Suspension of Rules title 1

In the document 'Nunc Pro Tunc Reconsideration Order 22 July 1997 & Order 29 July 1998' filed Aug 16, 1999, Apx p 217a, (Dkt Entry 12) see xxxiii brief; the Plaintiffs did most certainly ask the Court to Suspend the Rules, FRCP Rule 4 & US Dist Ct. Local Rule 4.1 for Good Cause & cited the reasons

therein, the Court could have acted sua sponte.

Failure of both the District & Appellate Courts to exercise their discretion on the Plaintiffs behalf, effectively denied them their Constitutional Right to a Jury Trial under the 5th, 7th, and 14th Amendments of the Constitution of the United States & denied them the protections not to be restrained without probable cause, under the 4th, 9th and 14th Amendments of said Constitution.

Both Courts abused their discretion by failure to suspend FRCP Rule 4, US Dist Ct Local Rule 4.1, & FRCP Rule 60(b) where applicable, on the Plaintiffs behalf!

(5) The Courts & the Defendants are making an end run around the Constitution by dispossessing the Plaintiffs of their land & restraining them without probable cause by failure to waive FRCP Rule 4, US Dist Ct local Rule 4.1, & FRCP Rule 60(b) for the good cause of a Trial by Jury to which the

(5)

Plaintiffs are entitled & 4th Amendment Protections. (Supra pgs 3,4 & 5) This following Case gives witness to the Plaintiffs' arguments:

> "(6) Implicit in this appeal is the right of a court to promulgate rules and to interpret them as adjuncts to the dispensation of justice and the orderly and expedient administration of its functions, with limitation that substantial rights of liti-

gants be not unduly circumscribed." (emphasis added)
S. Stern & Co. v the United States; 331, F.2nd 310 (1963)

The Courts have supported the Defendants circumvention of the Constitution by their failure to assert their discretion to waive FRCP Rule 4, US Dist Ct Local Rule 4.1, & FRCP Rule 60(b) for good cause that being a Jury Trial for the Plaintiffs before their lands were confiscated & before said Court Order issued, restraining them from their own land, without probable cause & without jurisdiction!

(6) Even the Supreme Court of the United States itself affirms the Plaintiffs position as follows: Cite in dicta:

"Where rights secured by the Constitution are involved, their can be no rule making or legislation which abrogate them." (emphasis added)
Ernesto A. Miranda v State of Arizona, 348 US 433; 86 Sup Ct Rpt 1602; n 73 p 160

There is no question that Rules must give way in the face of the exercise of a Constitutional Right! Said Rules may not be applied to deny a Constitutional Right!

28 USC § 2072(b), Chp 131 Rules of Court FRCP; 28 USC § 2071(c)(1), Chp 131 Rules of Court FRCP; FRAP Rule 2; Miranda v Arizona, fn.73; and S. Stern & Co v United States.

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clearly support the arguments of the Plaintiffs & are witness to the constitutional merit of their claim, prohibiting denial of their constitutional rights.(see fn.1)

The illusion of 'rights' that are never attainable is a scam! If this Court does not address these issues, then! other Courts will ignore the Rights denied at Bar rendering said rights useless and of no effect whatsoever! The Courts have all failed to enforce the Constitutional issues at bar up to now.

What useful purpose is served to have substantive rights, only to have said rights abridged prematurely by the Rules of Court which the Supreme Court of the United States has refused to correct, thus far in prior appeals interconnected with this appeal herein!

A new cause of Action will further circumvent the perfected asserted rights of the Plaintiffs under the Constitution of the United States rendering Due Process as Dual Process as per FRCP Rule 60(b) application if not waived by the Court under the circumstances of this case scenario.

(7) The Court in effect is attempting to Tax or Assess with a monetary penality Costs taxed against the appellants in an additional effort to punish their assertion of their

Constitutional Rights & Privileges & Immunities as secured by said constitution & laws of the United States violative of 18 USC Chp 13 Secs §§ 241 and 242, Conspiracy against rights of citizens and Deprivation of rights under color or law, (Civil Rights).

A Constitutional Right or the assertion of a Constitutional Right, like Right to

(7)

Jury Trial, Right not to be Restrained without Probable Cause, Right to Exhaust their Statutory Remedy & their Right to Due Process of Law & Not Dual Process of Law; can not be taxed or assessed with any type of monetary penality in an effort to obstruct, to injure, oppress, threaten or imtimidate any citizen in the free exercise or enjoyment of said rights & privileges so asserted!

Simply! you can not tax or assess a Constitutional Right as it is unconstitutional to do so, when the right is asserted!

(8) In an almost parallel case in the United States Court of Appeals, for the Tenth Circuit USCA, 10th; before Anderson, Baldock & Brorby, Circuit Judges (see supp Apx p 288a 289a, & 290a; informal brief, Sec V, p 27-28) it is interesting to note that the USCA,10th in effect suspended all the Rules & permitted the Constitutional Right as asserted to pervail on April 7, 1995 wherein the Court enforc

the asserted constitutional rights of the Plaintiff-Appellant & waived & suspended all Rules inorder to permit the Right:

"Then there is a question of the 7th Amendment, and of which would boil over in the Federal Rules of Civil Procedure, as contained in the 1991 Ed., Supreme Court Rule No. 17.1, the Court's Original Jurisdiction, vs. the Courts Appellate. Then the facts of the courts original jurisdiction, exclusive to the people, did speak, and was placed into evidence." W.E. Ensminger v Farm Credit Bank of Wichita, First National Bank of Okeene, Nos. 94-6415, 94-6417, WD Oklahoma

The Plaintiff was untimely & his cause of action was not dismissed because of a FRCP Rule and the 10th Circuit went forth and did not obstruct his asserted Constitutional Right with a FRCP Rule of Court! They suspended the Rule and permitted the Right, as well they should have.

(8)

One questions why this important case went unreported like this one?

And so-equally, the USCA, 3rd; is encouraged to Rule in a similar manner less there be a conflict with the decision of another United States Court of Appeals on the same important matters by departing from the accepted & usual course of judicial proceeding:

"(a) a United States court of appeals has entered a decision in conflict with the

decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."
Supreme Court Rule 10, Considerations Governing Review on Certiorari, Part III Jurisdiction on Writ of Certiorari; Rules of the Supreme Court of the United States adopted January 11, 1999, effective May 3, 1999.

The Court of Appeals and the District Court are shadowboxing with the Rules of Court so as to deny and obstruct the Constitutional Rights of the Plaintiffs! If the above cited Parallel Case is found 'Res Judicata' in the USCA, 10th Cir., then why is not the Parallel Case herein Not 'Res Judicata'in the USCA, 3rd Cir.?

CONCLUSION

The Petitioners have been denied a Jury Trial under the 5th, 7th, and 14th Amendments of the Constitution of the United States and are being denied the protections of the 4th, 9th, and 14th Amendments,(of said Constitution) and are asking this Court via Judicial Notice herein to suspend and waive the Rules accordingly so as to make way for their asserted Constitutional Rights as their is no question as herein

above stated that Rules must give way in the face of the exercise of a Constitutional

(9)

Right! Said Rules may not be applied to deny, obstruct, or hinder a Constitutional Right! Note: It is amazing to see the extent to which the Courts will go so as to deny legitimate relief to the Plaintiffs ?

The District Court and the Appellate Court clearly had discretion, (supra pgs 1-9 inclu.), to waive FRCP Rule 4, US Dist Ct Local Rule 4.1, FRCP Rule 60(b) all under FRAP Rule 2 for 'good cause'; i.e. Plaintiffs' Right to Jury Trial and Not to be restrained from their lands without probable cause by a Court that lacks jurisdiction under 'Collateral Estoppel'and 'Res Judicata', 'Law of the Case', 'Pendent Lite', 'Lis Pendens', 'Doctrine of Exhaustion of Remedies', along with their 'Inability to Comply defense', 28 USC § 2072(b),28 USC § 2071(c)(1),Stern & Co. v United States, 331 F2d 310;Miranda v Arizona, 348 US 433; 86 Sup Ct Rpt 1602, n73 p 1608; Ensminger v Farm Credit Bk of Whichita 1st Ntl Bk of Okeene; USCA, 10th Cir Nos. 94-6415, 94-6417, WD Oklahoma; as combined with the 5th, 7th, & 14th Amendments in conjunction with the 4th, 9th, & 14th Amendments of the Constitution of the United States before their

lands were seized and before being restrained without probable cause by a court that did not have jurisdiction as said Plaintiffs were denied Due Process of Law and their Rig to Exhaust their Statutory Remedy Prematurel because of the Rules of Court: FRCP Rule 4, US Dist Ct. Rule 4.1, FRCP Rule 60(b) that offers only a 'Dual Process of Law' instead of waiving the Rule and granting relief; as the Rules can not obstruct the asserted Constitutional Rights of the Plaintiffs herein!

For the reasons set forth, (supra pgs 1-10), above and all documents filed in this Appeal; we request this Court to reverse itself and Waive the Rules,(suspend the rules) and Permit the Right granting relief to the Petitioners providing they have 'Jurisdictio under the Law of the case or dismiss for Lack of Subject Matter Jurisdiction as the Matter is 'Res Judicata' !

Respectfully submitted;
Joseph R. Caterina
Frances Caterina
Emmett Caterina
Clara Caterina deceased 6/30/01

DATE: 6 August 2001

(10)

Respectfully Submitted:
s/s Joseph R. Caterina, In Pro Se
s/s Frances Caterina, In Pro Se
s/s Emmett Caterina, In Pro Se
Clara Caterina deceased 6/30/01

DATED: (11) 6 August 2001

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-3793

JOSEPH R. CATERINA; FRANCES CATERINA; EMMETT CATERINA; CLARA CATERINA,
Appellants

v

UNIFIED JUDICIAL SYSTEM OF COMMONWEALTH OF PENNSYLVANIA, and Related Parties; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH

On Appeal From the United States District Court For the Middle District of Pennsylvania (M.D. Pa. Civ. No 97-cv-00242)

District Judge: Honorable Wm. W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
July 6, 2001

BEFORE: ALITO, AMBRO and ROSENN,
Circuit Judges

(Filed July 25, 2001)

OPINION

PER CURIAM

Pro se appellants Joseph Caterina, Frances Caterina, Emmett Caterina and Clara

Caterina appeal the District Court's refusal to reconsider its orders dismissing the Caterinas' action without prejudice for failing to effect timely service of process and denying their motion for clarification. For the reasons explained below, we will affirm.

In 1997, the Caterinas filed pro se complaint under 42 U.S.C. § 1983, claiming that several entities connected with the judicial system of the Commonwealth of Pennsylvania violated their constitutional rights to due process and to equal protection under the law. The Caterinas failed to serve the defendants within 120 days, as required by Federal Rule of Civil Procedure 4(m). The District Court entered an order directing them to effect service and warning them that failure to do so would result in the dismissal of the action. When the Caterinas again failed to serve the defendants properly, the Dist Ct dismissed the action without prejudice for failure to comply with its prior order.

In July 1998, the Caterinas filed a motion for clarification. Because the Court's July 22, 1997 order dismissing the action was self-explanatory & because the Caterinas did not indicate that they sought any additional relief, the District Court denied the motion for clarification. Several months

later, the Caterinas filed a document captioned "Nunc Pro Tunc Reconsideration Order 22 July 1997 and Order 29 July 1998," evidently seeking reconsideration of the orders dismissing the case and denying clarification. In an order entered August 30, 1999, the District Court denied the request for reconsideration and reminded the Caterinas that their case was dismissed without prejudice; thus, if they wish to pursue their claim,

(2)

they could file another action and comply with the service requirements. This appeal followed. The matter has been fully briefed and is now ripe for consideration.[1]

We have jurisdiction under 28 U.S.C. § 1291. Although the Caterinas' motion for " Nunc Pro Tunc Reconsideration" itself did not identify the legal authority for its presentation, because it was filed beyond ten days of entry of judgment, we view it as having been filed pursuant to Federal Rule of Civil Procedure 60(b). Lorenzo v Griffith, 12 F.3d 23, 26(3d Cir. 1993). The Standard of review of a District Court's denial of relief under Rule 60(b) is abuse of discretion. See Browder v. Directro, Illinois Dep't

[1]All of the appellees have either notified the Court that they are not participating in the appeal or failed to file a brief; thus, the appeal is proceeding on appellants' brief onlt. See Clerk's Order dated August 9, 2000

of Corrections, 434 U.S. 257, 263 n.7(1978); Lorenzo, 12 F.3d at 26.

The District Court notified the Caterinas of their failure to serve defendants and gave them an extra 30 days in which to effect service. The Caterinas neither served the defendants nor explained their failure to do so. Accordingly, the District Court properly dismissed the action for failure to comply with its prior order. Moreover, the District Court did not abuse its discretion in denying the motion for clarification. As the District Court correctly concluded, the order dismissing the action was self-explanatory and, absent any futher request for relief, clarification was unnecessary.

The Caterinas' request for reconsideration did not identify any reasons justifying

relief from the District Court's prior orders. Rather, the Caterinas contended that their petition for writ of certiorari, stemming from a separate District Court proceeding and pending in the United States Supreme Court, somehow relieved them of the time requirements for effecting service. This argument is unpersuasive. Federal Rule of Civil Procedure 4 makes no such allowances and the Caterinas were adequately informed of their service obligations and the

consequences in the event of noncompliance. Thus, the District Court was well within its discretion to deny the Rule 60(b) motion.

Accordingly, we will affirm the District Court's denial of the Caterinas' request for reconsideration, entered August 30, 1999.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-3793

JOSEPH R. CATERINA; FRANCES CATERINA; EMMETT CATERINA; CLARA CATERINA,

Appellants

v

UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PENNSYLVANIA, and Related Parties; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH

On Appeal From the United States Dist Court
For the Middle District of Pennsylvania
(M.D. Pa. Civ. No. 97-cv-00242)
Dist Judge: Honorable Wm. W. Caldwell

Submitted Under Third Circuit LAR 34.1(a)
July 6, 2001
Before: ALITO,AMBRO & ROSENN, Cirt. Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania & was submitted pursuant to the Third Circuit LAR 34.1(a). On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered August 30, 1999 & the same are hereby affirmed. Costs taxed against the appellants. All of the above in accordance with the opinion of this Court.ATTEST:Katherin Brower
DATED: July 25,2001 Chief Deputy Clerk s/s
Certified as a true copy & issued in lieu of a formal mandate on Sept. 4, 2001 teste: s/s Marcia M Waldron Clerk, USCA for 3rd Circuit

see (A-58) herein No. 3:MI-01-0189 Scranton Attachment to No. 99-3793 Petition Panel Rehearing see (A-2) herein that was filed USDC, MD Pa

UNITED STATES COURT OF APPEALS

** TENTH CIRCUIT

WARREN E. ENSMINGER,
Plaintiff-Appellant,
v.
THE FARM CREDIT BANK OF WICHITA; FIRST NATIONAL BANK OF OKEENE,
Defendants-Appellees.

Nos 94-6415 94-6417
W.D. Oklahoma
(D.C. Nos. CIV94-1038R & CIV94-1040-R

ORDER AND JUDGMENT *

FILED USCA 10th Apr 07 1995 Patrick Fisher Clerk ? By s/s April A Cart

Before ANDERSON, BALDOCK, and BRORBY, Circuit Judges

After examining the briefs & appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Warren E. Ensminger appeals the dismissal of his actions, characterizing the actions as follows:

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470

** (1)

FILED Apr 10 1995 Robert D Cenios Clerk US Dist Court Western Dist of Okla By s/s Deputy DOCKETED

This action was instigated to determine who has the highest title to property located in (Major and Grady) county, Oklahoma Territory state, of which the United States of America by contract, gave up all right, title or interest in said property, without any conditions set forth; and it is very clear by the defendant's pleadings that it is not entity that is claiming the property, Mr. Butler for Federal Land Bank clearly stated that the claim is the United States, and that Federal Land Bank and First National Bank in Okeene are not of the United States of America. Mr. Elliott's pleading for First National Bank in Okeene, plead the resident scam, and didn't object to the Federal Land Bank claim. Then there is a question of the 7th Amendment, and of which would boil over in the Federal Rules of Civil Procedure, as contained in the 199[illegible] Ed., Supreme Court Rule No. 17.1, the Court's Original Jurisdiction, vs. The Courts Appellate. Then the facts of the courts original jurisdiction, exclusive to the people, did speak, and was placed into evidence.

Appellant's Opening Briefs at 1.

Upon review of the records and arguments of the parties, the judgment of the district court is AFFIRMED. The mandates shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge

Attest a true copy of DC C[illegible]
Robert D Dennis Clerk
By _____

SEAL
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA s/s

Attachment to No 99-3793 Petition Panel Rehearing

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
Office of the Clerk
Byron White United States Courthouse, 1823 Stout St.; Denver, Colorado 80257 (303) 844-3157 Atrick Fisher Clerk, Betsy Shumaker C-hief Deputy Clerk

April 7, 1995

Mr. Robert D. Dennis, Clerk United States Dist Ct for the W. District of Oklahoma
United States Courthouse
200 N.W. Fourth; Room 3301
Okalahoma City, OK 73102

Attest: True & Corredt Copy of Original
"Prothonotary of Necessity
K.S. s/s

Warren E. Ensminger
Route 1, Box 1D
Lahoma, OK 73754

Mr. David C. Butler; McNight & Gasaway
201 N. Grand; P.O. Box 1108
Enid, OK 73702

Mr. C.L. Elliott, Mr. Brian N. Loveall; Elliott, Enabnit, Newby & Ezzell
114 E. Broadway Avenue, Suite 500, P.O. Box 5589; Enid, OK 73702

Re: 94-6415, Ensminger v Farm Credit Bk
Lower Dkt: CIV-94-1038-R
94-6417, Ensminger v Farm Credit Bk
Lower Dkt: CIV-94-1040-R

Dear Mr. Dennis, Mr. Ensminger, & Counsel:

The court's order & judgment was filed in the subject case today. A copy of the order & judgment is enclosed for all parties.

In accordance with Fed.R. App. P. 41, I enclosed for the clerk of the trail court,or for the named agency, a certified copy of the order & judgment, which constitutes the mandate. By direction of the court, the mandate shall be filed immediately in the records of the trial court of agency.

The clerk will please ackonwledge receipt of this mandate by file stamping & returning the enclosed copy of this letter. Any original record will be forwarded to you at a later date.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Appeal No. 99-3793

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA

Appellants/ Petitioners

vs

UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PENNSYLVANIA AND RELATED PARTIES, LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY, PENNSYLVANIA GENERAL STATE AUTHORITY, and BLAKELY BOROUGH et al.

Appellees/ Respondents

INFORMAL BRIEF
BY APPELLANTS

Order Entered: 27 August 1999

Petitioners: In Pro Se

c/o

Joseph R. Caterina, Pro Se
202 Kenyon Drive
Peckville, PA. 18452
(570) 489-8741

DATE: 18 September 2000

(Cover)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
Appeal No. 99-3793

Joseph R. Caterina, et al;

Plaintiffs/ Appellants/ Petitioners,

vs

Unified Judicial System of Pennsylvania and Related Parties, et al:

Defendants/ Appellees/ Respondents.

PART I

INFORMAL BRIEF
BY APPELLANTS

Comes now Appellants above named and Petition this Honorable Court to consider this Informal Brief by Appellants: viz Joseph R. Caterina, Frances H. Caterina, Emmett Caterina and Clara Caterina from the ORDER RECONSIDERATION of the U.S. District Court, M.D., PA., Honorable William Caldwell, entered on August 27, 1999; (Dkt Entry 18; Apx 223a, 224a) nunc pro tunc motion for reconsideration (Dkt Entry 12; Apx 217a, 218a) is denied.

They extended a legitimate flood project on the Wildcat Creek to now include the minuscule tributary Tinklepaugh channel that runs for about five blocks crossing Main, Keystone, Cemetery Streets and terminates just a few hundred feet after crossing Union Street at which point there is no evidence of any channel. It drains about 120 acres of run off, but earlier on, before strip mining about 180 acres. The channel has had little or no history of flooding in over 75 years & has been in place since the turn of the last century.

In order to accomindate two or more developers above this channel the powers to be have decided to dump the upstream Eynon Creek, about 1450 acres of run off, into the minuscule Tinklepaugh Channel so that the developers would not be required to impound all runoff within each development at a great savings to them and their Country Club investors.

The ploy of dumping a much larger watershed into a small channel in the name of flood protection wherein neither has any history of flooding is the crux of dispute.

Armed with insider information the powers to be had straw agents purchase vast tracts of land above the Tinklepaugh before huge

sums of public moneys were utilized to improve the scars of strip mining. With prior knowledge & privileged information about newly extended sewer line and flood projects that would greatly enhance this worthless land so as to enrich themselves at taxpayers expense. All of this hinges upon exit of this additional storm (water) runoff into the Tinklepaugh (lower) Channel.

(18)

The monetary rewards so great, that officals went beyond the norm & begun to construct without the prerequisite of title to all necessary lands needed within the bogas flood control project limits.

The Eynon Creek now empties into an openinto the mines & inorder to close the opening the option to dump the Eynon Creek into the (lower) Tinklepaugh Channel became to attractive as to execute the idea. However! these newly formed (additional) runoff diversions could have been dumped directly into the Lackawanna River, above the (lower) Tinklepaugh, without risk of flooding to the Tinklepaugh residents.

The author of these pleadings, one of the Appellants, a Registered Professional Civil Engineer, who formerly was employed by the United States Army Corps of Engineers in Design Branch for three years working on

the largest flood control projects in Pennsylvania; is well aware that at some point in time, a storm greater than 100 yrs. will flood the residents of the (lower) Tinklepaugh causing real damage and loss of property!

In an effort to prevent this from ever happening a case was invoked in the US Dist Ct., M.D. PA 8 Apr 93 demanding a trial by Jury (See US Sup No 94-1231) Any flooding without the project would be nill and minuscule; but now with an additional 1450 acres of runoff could now be life threating to the older residents. The case was dismissed without ever having been presented and no relief was given.

The Appellants then resorted to the statutory declared Right to Remedy under Common Law, (1 Pa. CSA § 1503, 1504; P.L.E. Common Law § 1,2,3,4, & 5; 46 Pa. PSA § 151, & 152; Constitution of PA. Art 1 § 6 Trial by Jury; Constitution of PA. 15 July 1776, Ch 1, XI Trial by Jury) also (1 Sm. L. 429

§§ Sec 1 to 3, Sec 8 (28 Jan 1777) Common Law;42 PS § Rule 1058 & Rule 1061 Civil Procedure Trial w/o Jury. All was combined with the Seventh Amendment & Fourteenth Amendment of the Constitution (of the United States) along with the Fourth Amendment &

Fourteenth Amendment of the Constitution of the United States.

In despriation while litigation was pending, they actually tried dumping the Eynon Creek into the (lower) Tinklepaugh Channel & created real Flooding on the (lower)Tinklepaugh violative of 18 CPSA § Sec 3302, 3303 and Sec 902. The Department of Mines (US Dept of Interior) quickly put a stop to that!

As this (case) story goes; the Appellants perfected an Action to Quiet Title & the Appllees quickly ran to Equity (No 60046-1996 Lacka Co.) claiming they had no remedy in Law & immediately restrained the Appellant Joseph R. Caterina & John & Jane Doe.(See USCA, 3rd Cirt. No 99-3689 & 99-3690) now pending before this Court. What the Appellees really have is NO title, the prerequisite to construct? Without title, & because they have defaulted in silence to all litigation, they have NO case.

Now comes the clincher; they already validated the (Appellants') Common Law Action to Quiet Title by running to Equity claiming no Remedy in Law; but however did not realize the 'Res Judicata' aspect of the Common Law Jury; that being this Court's decision to determine: did the Appellants have their right to Trial by Jury or not!

The Appellees were counting on the US Sup Ct. Case No 97-102; (Dkt Entry 3; Apx 28a t 123a) entered July 17, 1997 and (Dkt Entry Apx 134a to 196a) entered July 17, 1998; w- ould be denied, thus ending their dilemma; but, However! that backfired on them as s- aid denial represented the Appellants ex-

(20)

haustion of their statutory remedy that now validates the assertion of their Statutory Declared Right to Remedy under Common Law & their Common Law Action to Quiet Title is now absolute!

Additionally! the Appellants have also perfected their Right to Trial By Jury in the Federal Courts should not the case already be deemed 'Res Judicata' by this cour invoking the doctrine of 'Collateral Estopp el' which should end all of this under the Seventh Amendment of the Constitution of the United States wherein the Court of E- quity must vacate all Restraining Orders forthwith as they lack Jurisdiction!

The 'inherent danger' that the government has created was heretofore nonexistant! cit

> "The right of the people . . . to be sec- ure in their persons, houses, papers and effects, . ., against unreasonable . . . seizures, shall not be violated . . . ", (emphasis added)
> Amend. IV Constitution of United States

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The Citizens of the Tinklepaugh are now in a position of greater risk and (real) danger of flooding than ever before (100 years or more).

The District Court failed to understand that the Appellants were making every effort to perfect their Right to Trial by Jury under the Seventh Amendment and that the Pendency of the Writ of Certiorari and the Petition Rehearing (US Sup Ct No 97-102 / Atty Thomas Marsilio) had very great bearing as its, exhaustion was crucial to the perfection of their asserted Rights to Common Law Remedy as the Right to Appeal needed to be exhaused inorder to validate their right to Trial by Jury under the VII Amendment & thus FRCP Rule 4 (and US Dist Ct MDPa Local Rule 4.1) has obstructed said Right to Trial by Jury as now perfected!

(21)

VI ARGUMENT

I Pennsylvania Supreme Court denied a Petition for Reconsideration for Allowance of Appeal in January 1997 and the Appellants timely invoked jurisdiction in both the US Dist Ct MD Pa see (Dkt Entry 1; Apx 3a) entered 18 Feb. 97 and the Supreme Court of the United States; see (Dkt Entry 3; Apx 28a abd 48a) entered 17 July 1997, see

(Dkt Entry 6, Apx 134a and 148a) entered 17 July 1998; as filed in said Court 15 April 1997.

The District Court dismissed the action on July 22, 1997; (Dkt Entry 4; Apx 124a) entered 22 July 97 pursuant to Order 8 July 97; (Dkt Entry 3, Apx 18a) entered 9 July 97 citing F.R.C.P. Rule 4 (& US Dist Ct MD Pa Local Rule 4.1), (Service within 120 days).

The Supreme Court of the United States first responded to Appellants on 31 July 97 (Dkt Entry 6; Apx 146a) entered 17 July 98 and last responded January 12, 1998 petition rehearing denied; (Dkt Entry 5; Apx 127a) entered 17 July 98.

The Appellants asserted their Statutory Declared Rights to Remedy under Common Law according to the Laws of the Commonwealth of Pennsylvania,(see para 5, p 19 & para 1, p 20 herein); combined with their Right to Trial by Jury under the Seventh Amendment of the Constitution of the United States as combined with the Fourteenth Amendment of the Constitution of the United States with regard to perfecting an Action to Quiet Title so as to secure their rights under the Fourth Amendment combined with the Fourteenth Amendment of said Constitution

The District Court failed to understand that the Appellants were making every effort to perfect their Right to Trial by Jury under the Seventh Amendment & that the Pendency of the Certiorari Petition and Petition Rehearing had very great bearing as its' exhaustion was crucial to the perfection of their asserted Rights to Common Law Remedy; viz. 'Right to Trial By Jury', as the Statutory Remedy; the right to appeal needed to be exhausted; inorder to validate their Right to Trial by Jury under the VII Amendment of the Constitution of the United States.

The granting of Certiorari was not crucial, but the exhausting of the Statutory Remedy under the Law; in this case the right to appeal because of the absence of any remedy thereof; was crucial to perfecting the validation of their Right to Trial By Jury under the Seventh Amendment of the Constitution of the United States. And that was accomplished on 12 January 1998; (see Dkt Entry 5; Apx 127a) entered 17 July 98.

Federal Rule of Civil Procedure FRCP Rule No 4, and (US Dist Ct Local Rule No 4.1; see Order 27 Aug 99 (Dkt Entry 18, Apx 223a, 224a) entered same date of Order; ORDER being herein appealed; obstructed their rights secured under the Constitution

of the United States by abrogating them prematurely!

The Judge was asked to suspend the Rule and Permit the perfected Remedy, but the Judge & his Law Clerks refused & as a results this appeal must be decided & Appeals No 99-3689 and No. 99-3690 may be directly affected. Did the Judge error by suspending the Right instead of the Rule of Court or in the alternative should not the Rule have been abrograted inorder to permit the Right in accordance with Miranda v Arizona?

(23)

cite: "Where rights secured by the Constitution are involved, their can be no rule making or legislation which abrogate them." (emphasis added) Ernesto A. Miranda v. State of Arizona, (348 US 433; 86 Sup Ct Rpt 1602; n 73 p 1608).

The Order of the Judge to dismiss obstructed our Right to Trial by Jury & our Statutory Right to Remedy under the Law.(Notice of Appeal; Dkt Entry 23; 228a & 229a) entered 13 Sept 99.

The Appellants filed in the Supreme Court of the United States on 15 April 1997; (Dkt Entry 3, 48a) and said Court failed to acknowledge receipt of filing until July 31, 1997; (Dkt Entry 5, Apx 127a); entered 17 July 98; however the Judge dismissed the case on July 22, 1997 ORDER dismissed with-

out prejudice now requiring another completely new case; (Dkt Entry 4, Apx 124a) entered 22 July 97; 9 days before Clerk Loretta S. Ruffin responded to US Sup Ct Case no. 97-102. Letter July 31, 1997; (Dkt Entry 6; Apx 146a) entered July 17, 1998.

In the Complaint (Dkt Entry 1; Apx 7a) filed 18 Feb 97 in para 19) lines 7 & 8; the Appellants complained of denial of their right to 'Trial by Jury' as opposed to 'Trial with Jury' and following: 'Rights to Common Law'; rights to 'Quiet Title Action'; and rights to their property along with being Restrained to enter thereupon! In addition denial to rights to 'Due Process of Law' and the 'Equal Protection of the Law'! All of this being true.

Additionally! the ORDER of the Judge to dismiss; (Dkt Entry 4; Apx 124a) Entered 22 July 97; obstructed the Appellants Right to Trial by Jury and their Statutory Rights to Remedy under the Law as he (the Judge) suspended their Rights instead of the Rule and errored grossly under the circumstances!!

(24)

It is requested of this Court to Reverse the Judges 22 July 1997 Order; (Dkt Entry 4; Apx 124a) entered same date pursuant to ORDER 8 July 97; (Dkt Entry 3, Apx 18a) entered 9 July 97; thus suspending FRCP Rule 4 and

US Dist Ct Local Rule 4.1; so-as not to abrogate the Constitutional Rights of the Appellants; thus enforcing their 'Right to Trial by Jury' under the Seventh Amendment((FRCP Rule 38(a)) and their 'Rights to Remedy under the Law'.

II 1. The Plaintiffs Exhausted their Statutory Remedy on 12 January 1998; (Dkt Entry 5; Apx 127a) entered 17 July 98; (Dkt Entry 6; Apx 183a, 184a). cite:

> "Review by the Supreme Court of the United States was crucial to the perfection of our asserted Rights to Common Law Remedy; viz: 'Right to Trial by Jury', as the Statutory Remedy; the right to appeal; was exhausted; thus validating our Right to trial by Jury under the VII Amendment of the Constitution of the United States." (Notice of Appeal; Dkt Entry 23; Apx 228a 229a) entered 13 Sept 99.

2. MAXIM OF LAW: Silence is consent!

All parties were silent and all Courts were silent! See Attorney Marsilio's Writ of Certiorari: (Dkt Entry 3; Apx 28a) entered 17 July 97; and Plaintiffs/Appellants Writ of Certiorari: (Dkt Entry 3: Apx 48a) also entered 17 July 97; and Also! Attorney Marsilio's Petition for Rehearing Writ of Certiorari: (Dkt Entry 6; Apx 134a) entered 17 July 1998. See: Ex-M; (Dkt Entry 26; Ex M-1; Sup Apx 341a) entered 24 May 00; 'Silence is Fraud'.

3. Argument! Case is perfected, all Parties defaulted! See: EX-J; (Dkt Entry 26; Ex J-1, J-2, J-3; Sup Apx 331a, 332a, 333a); Ch XCII, Last part last sentence: "The Plaintiff shall have Judgment Against the Defendant by Default." Case is over!

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4. Appellants perfected Right to Trial by Jury!

By exhausting their Statutory Remedy, in this case the right to Appeal; the Right to Trial by Jury under the Federal Court Jurisdiction was perfected by the United States Supreme Court's 12 January 1998 ORDER; (Dkt Entry 5; Apx 127a); entered 17 July 98; and because or FRCP Rule 4 and US Dist Ct Local Rule 4.1; Appellants have yet to have received said Jury Trial in Federal Court under Federal Procedure Rules!

III In the Alternative Appellants have had their Right to Trial by Jury under the VII Amendment! Cite:

"a plaintiff has an independent right, guaranteed by the Seventh Amendment of the United States Constitution, to a trial by jury'. (emphasis added) Dianne Graham v Tolzis Communications, Inc. et al. U.S. Dist Ct.; E.D., PA, Civil No 98-6269 by Fullam, Sr. J.; Memorandum and Order, April 18, 2000; (Dkt Entry 28; Ex Z-1, Z-2, Z-3; Sup Apx 379a, 380a, 381a); also! (Dkt Entry 26; Ex C-1, C-2; Sup Apx 281a, 282a)

This Court must Rule, has this Right to Trial By Jury been already received by the Appellants or in the alternative has this Right to Trial by Jury been denied by the enforcement of FRCP Rule 4 and US Dist Ct Local Rule 4.1 ?

IV 'Similarly Res Judicata does apply barring the jurisdiction of reexamination in any Court of the United States . . .' Seventh Amendment of the Constitution of the United States; cite:

"Since the subject matter has previously been adjudicated and Res Judicata does apply and bars the action." (emphasis added)
Signed 19 Sept 1995 by J. John McCellan Merohull ? * *
A.H. Belo Corp. et al v F.R. Johnny Johnston et al; 14th Judicial Dist; Dallas County, Texas; Order of Dismissal, Cause No. 95-07735; 19 Sept 1995; (Dkt Entry 26; Ex Y-1; Sup Apx 377a) J. John McCellan Merohull ? ± *

This case enforced a Common Law Action to Quiet Title and protected the Seventh Amend-

ment Constitutional Rights along with Rights to Remedy Under Common Law as Texas is a Common Law State. (State Court affirmation) The theme of this litigation herein!

V "Then there is a question of the Seventh Amendment, and of which would boil over in the FRCP as contained in the 1991Ed Sup Ct R. 17.1 the Court's Original Jurisdiction vs the Courts Appellate. Then the

facts of the courts original jurisdiction, exclusive to the people, did speak, and was placed into evidence. Appellant's Opening Brief at 1." Cite:

*" This order and judgment is not a binding precedent, except under the doctrines of Law of the Case, Res Judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; neverthe less, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470." (emphasis added)
W.E. Ensminger v Farm Credit Bank of Wichita; and the First Ntl Bank of Okeene; filed US Ct Appeals,in the 10th Circuit Apr 7, 1995; clerk PF No. 9406415 & 94-6417, W.D. Oklahoma (D.C. Nos Civ 94-1038-R & Civ 94-1040-R); (Dkt Entry 3; Apx 110a, 111a) entered July 17, 1997 and (Dkt Entry 6; Apx 175a, 176a) entered July 17, 1998 and also (Dkt Entry 26; Ex D-1 to D-10 incl; Sup Apx 283a to 292a) entered 24 May 2000.

Both Ensminger and Appellants herein had their cases dismissed in the District Courts of the United States for procedural defects. Both perfected their Common Law Remedy under the Seventh Amendment (of the Constitution of the United States) between their dismissal and their Appeals to the US Courts of Appeals; Both were Pro Se; Ensminger was untimely and the Appellants herein were timely. The Federal Court Affirmed and acknowledged his (Ensminger's) Seventh Amendment Activities by putting a new twist to the 'dismissed for lack of subject matter jurisdiction' in

the doctrines of Law of the Case, Res Judicata and Collateral estoppel were now implicated into the scope of lack of jurisdiction! So-equally should these doctrines apply to the Appellants herein and the Court herein must determine thwie jurisdiction in view and in light of the Seventh Amendment Ass-

(27)

ertions as perfected by the Appellants herein. If the Court has no jurisdiction because of Res Judicata, then it is the duty of the Court to declare such and assist the the Appleants in enforcing their legal position by notification to the other Courts who so-equally may also lack jurisdiction, such as Equity; that would then resolve all matters herein including the restraining ORDER on the Appellants. Cite:

"James A. Elliott United States Bankruptcy Court;circ Apr 1995; US Bankruptcy Ct., W.D. Oklahoma; Civ No.94-14334 10|10; date 94-1338 ; 95-1013 ; n.(Bankruptcy Ct. agreed with Common Law Ct Decision and ORDERED Mr. Elliott receive all his property returned, even though it was sold).

Both of these hereinabove cited cases represents (Federal Court) Affirmation! (to Common Law Court's Final Order and Judgment

VI The Seventh Amendment holds that the Court of Equity lacks jurisdiction under the (Doctrine) of Res Judicata! Cite:

· "In suits at Common Law, where the value

in controversey shall exceed Twenty dollars, the Right of Trial by Jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the Rules of Common Law."(emphasis added)

Seventh Amendment of the Constitution of the United States as combined with the Fourteenth Amendment below: Cite:

" . . . no State shall . . . deprive any person of Life, Liberty, or Property, without due process of law; nor deny the the equal protection of the laws." (emphasis added)

Fourteenth Amendment of the Constitution of the United States

Under the Constitution and Laws of the Commonwealth of Pennsylvania the Appellants herein have asserted their rights under Trial by Jury in conjunction with their Rights to Remedy Under the Law and under the doctrine of res judicata and the VII Amendment and the Fourteenth Amendment; no court in the United States has jurisdiction to re-examine the issues already tried according to the Constitutional Rights and Privileges of United States Citizens as herein; nor

does the Seventh Amendment with specificity restrict or limit the Court System into which such rights and privileges can be asserted.

VII The Fourth Amendment holds that without probable cause and jurisdiction

that the Court of Equity must lift the restraining Order (Dkt Entry 26, Ex A-30, A-31, A-32, A-33; Sup Apx 269a to 272a) entered 5/24/00; Also! (Ex A-1, to A-29; Sup Apx 240a to 269a) and (Dkt Entry 29; Ex KK-1 to Ex KK-24; Sup Apx 431a to 454a) entered 21 July 00; pending USCA, 3rd Cirt Appx Approval. Cite:

> "The Right of the People to be Secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated!" (empnasis added)
> Fourth Amendment of the Constitution of the United States combined with the Fourteenth Amendment below. Cite:
>
> ". . . no State shall . . . deprive any person of Life, Liberty, or Property, without due process of law; nor deny the equal protection of the laws". (emphasis added)
> Fourteenth Amendment of the Constitution of the United States

The Unified Judicial System of the Commonwealth of Pennsylvania and related parties by restraining Joseph R. Caterina, Joh and Jane Doe without probable cause and ju isdiction have and are depriving the Appellants of both their 'Liberty' and 'Proper ty' by an unreasonable seizure of their personums and property without Title and are circumventing the Constitution of the United States without 'due process' violative of the IV + XIV; VII + XIV; IX; X; and XIV Amendments thereof and are sustain ing a 'Bogas' suit in Equity as the lands inequitably acquired inorder to perfect

future Title by prescription at the costs of the rights and privileges of Appellants and thses actions by the Defendants are repugnant to the Constitution of the United States! Cite: (Dkt Entry 28; Ex HH-3; and JJ-2, JJ-3; Sup Apx 408a; 420a, 421a). Cite:

a) Probable Cause Malicious Prosecution Extinguished 10/4/96

b) Probable Cause For Purposes of Construction Extinguished 9/1/96

c) Probable Cause Case Pending before the United States Supreme Court Extinguished 12 January 1998

d) Probable Cause apparently Petition for Reconsideration, Pa Supreme Court M.D. No. 0181 Dkt 1996; Extinguished 15 January 1997

(29)

Because without probable cause there is no valid legal or judicial reason to restrain the Appellants herein as is representative of an additional obstruction to FRCP Rule 4 and US Dist Ct Local Rules 4.1 an. additional abrogation of their Constitutional Rights violative of Miranda v Arizona; (348 US 433; 86 Sup Ct Rpt 1602; n 73, p 1608) and Title 18 USCA, Ch 13 Civil Rights Sec 241 conspiracy against rights of citizens and Sec 242 deprivation of rights under color of Law; (Dkt Entry 26; Ex CC-1 to CC-3; Sup Apx 383a, 388a, 398a); Also! cite: Notice of Appeal; (Dkt Entry 14;

Apx 215a) see herein index xxxxii; (Dkt Entry 13; Apx 231a) herein dinex xxxx.

VIII THE COURT OF APPEALS IS REQUESTED TO

(a) Determine if in fact the Appellants have already perfected their Right to Trial by Jury under the Seventh Amendment of the Constitution of the United States wherein the Case is 'Res Judicata' because they perfected their Right to Remedy by Exhausting their Statutory Remedy and if so does not the Doctrine of Collateral Estoppel bar all Courts jurisdiction, including Equity Courts.

(b) In the alternative determine if the Judge should have suspended FRCP Rule 4 and US Dist Ct Local Rule 4.1; so as not to abrogate the Right to Trial by Jury under the VII Amendment of said Constitution and under the Federal Rules of Procedure as Appellants have yet to receive said Jury Trial under said Rules and Reverse the Judges Ord 22 July 1997;(Dkt Entry 4; Apx 124a) and Rescind the Restraining Orders in Equity because, No matter What!, the Appellants are bding restrained without Probable cause by a Court that Lacks Jurisdiction.

(c) Decree the Case was lost by the Appellees because of default and render Judgment in favor of the Appellants; case

is 'Res Judicata' and over!

(d) Lift the Restraining ORDER with prejudice and end this 'Stealth Conspiracy' cite: (Blacks 4th, p 1584); because the Appellees have 'No Title' and thus 'No' Case!

(30)

Respectfully submitted, In Pro Se

s/s
Joseph R. Caterina, Pro Se

s/s
Frances Caterina, Pro Se

s/s
Emmett Caterina, Pro Se

s/s
Clara Caterina, Pro Se

DATE: 13 September 2000

c/o 202 Kenyon Drive
Peckville, PA 18452
(570) 489-8741

(page 31) photo sta 34+00, (mile .63)

LONG STANDING TINKLEPAUGH UNION STREET BRIDGE
5 Ft. across, 1 Ft. depth ±
(capacity 5 sq. ft. ±)
NO HISTORY OF FLOODING 75 YEARS

Note: Conspirators wish to manipulate 800 to 1450 acres of newly created storm water runoff to flood protect this minuscule channel placing residents at greater risk and danger of flooding for storms with greater than 100 years frequency. 'Now possibly life threating to elederly residents'

(31)

EXHIBIT AA-1 & AA-2; Sup Apx 382a, 383a;
(Dkt Entry 28, filed 6/13/00)

UNINDICTED CO-CONSPIRATOR PAUL R. MAZZONI, E
REFUSES TO LIFT THE RESTRAINING ORDERS

On Thursady, Dec. 19, 1996; Plaintiffs herein Emmett Caterina & Joseph R. Caterina went to the Law Offices of Atty Paul R. Mazzoin of the Law Firm of Mazzoni & Karam; to see if the Restraining ORDER could be lifited before Christmas!

Atty Mazzoni is the Senior Law Partner & his brother Atty Robert A. Mazzoni represents the Lackawanna County Sewer Authority concerning the project herein disputed. At this point in time a Petition for Reconsideration, PA Sup Ct, M.D. No 0181 Appeal Dkt 1996 was pending.

After a brief discussion it was clear that the Restraining ORDER on Joseph R. Caterina would not be lifted as Atty Mazzoni was right up on the situation and claimed that the Equity Court had Jurisdiction and that the County had an Equitable 'Interest' and had no remedy in law!

Atty Mazzoni admitted after reviewing our defense that we were the owners of the Lands in Dispute, but! how were we going to enforce our position?

We pointed out that the government lost the case and that the case was Res Judicata and the Equity Court did not have Jurisdict

ion. He laughed and stated that he'd let Judge Cottone know my position.

I let him know that if the Equity Court lacked jurisdiction that somebody might be sued including the Judge who restrained me!

(1)
AA-1, 382a

The restraining ORDER can't even be removed by an Action of Ejectment, so he claimed! (Atty Paul Mazzoni)

Atty Mazzoni was a District Attorney for a number of years in the past and cleraly understood that the purpose of the Restraining ORDER had extinguished as construction was completed and said ORDER extinguished therewith automatically!

I said that your so-called 'Equitable Interest'is impossible as it is after the 'fact' and that y[illegible] guys are mere 'tress-passers' and ought not be on our property what-so-ever!

We asked him one more time to remove the Restraining ORDER before Christmas! He failed to respond.

I asked who was going to assume responsibility for my being restrained without probable cause and by a Court that lacks jurisdiction! He just smiled.

My Dad, Emmett Caterina, had retained Atty Mazzoni in the past as I had also done.

I reminded my Dad how generously he over paid Atty Mazzoni in the past and how ill concer ned he was over this situation!

For fear of arrest I continued to stay away from my parents home and did not attend the Christmas gathering as I did not wish to be in contempt of Court!

s/s

Joseph R. Caterina

MEMORANDUM FOR THE RECORD
by Joseph R. Caterina 6/7/00

(2)
AA-2, 383a

EXHIBIT KK-19; Sup Apx 449a;(Dkt Entry 28, filed 6/13/00)

VIII

PROBABLE CAUSE FOR PURPOSES OF CONSTRUCTION (Dkt Entry, 26; Ex A-30,A-31,A-32,A-33; Sup Apx 269a to 272a) Final Order may 22,1996

19) As is apparent after reading the Final Order of 22 May 96 herein above referenced, the real purpose of the restraining Order was to construct. Construction was completed about the end of August early Sept 1996 as per announcment in the newspaper.

The Restraining Order should have extinguished as the purpose of the circumstances had extinguished, that being to Construct! on 24 December 1997 via telephone call to Elizabeth A.O'Reilly at about 11 A.M.; she admitted that said Restraining Order was only for purposes of Construction and should have been lifted over one year ago and apologised for the oversight with regard to my filing 'Listing Moot'; (Dkt Entry 26; Ex A-1 to A-6; Sup Apx 240a to 245a); but! however within less than 1 hour after stating that the Restraining Orders would be lifted, she reversed herself because of higher authority & only permitted Joseph R. Caterina to enter his parents house; See Amended Alternative Order & reply; (Dkt Entry 26; Ex A-10, & A-18 toA-20; Sup Apx 249a, & 257a to 259a). An Objection was promptly filed to the Alternative Order on 26 Dec. 1997; (Dkt Entry 26; Ex A-7 to A-10; Sup Apx 246a to 249a); and additional obj-

ections and Exhibits (Sup Apx 250a to 256a) with no response to date from either the Commonwealth Plaintiff or the Court in Equity! Restraining Order Construction Probable Cause Extinguished 1 September 1996 and Commonwealth Refused to Lift - 24 Dec 97.

(11)

KK-19. 449a

EXHIBIT KK-21 to KK-24; Sup apx 451a to 454a; (Dkt Entry 28, filed 6/13/00)

X

PROBABLE CAUSE EXTINGUISHED; FIRST REFUSAL TO LIFT THE RESTRAINING ORDER (Dkt Entry 28; Ex AA-1, AA-2; Sup Apx 382a, 383a)

21) On 19 December 1996; after the Construction was completed (1 Sept 96) and after the Malicious Probable Cause was reversed on Appeal (Order 4 Oct 96); the Appellants approached Atty. Paul R. Mazzoni, Esq in his law office to see if the Restraining Order could be lifted before Christmas; see Memorandum For the Recored by Joseph R. Caterina 6/7/00; (Dkt Entry 28; Ex AA-1, AA-2; Sup Apx 382a, 383a) cite: A-48, A-49, A-50 wherein he refused to lift the Restraining Order even though he, being a former District Attorney for Appellee Lackawanna County, clearly understood that the purpose of the Order had extinguished as the Construction was completed. He also failed to reply when asked who would assume responsibility for the Appellants being restrained without 'probable cause' by a court that Lacks Jurisdiction? At this point in time a Petition for Reconsideration (Pa Sup Ct., M.D. No. 0181, Appeal Dkt 1996; was pending. Apparently, without disclosing it, this Pending Reconsideration in the Supreme Ct. of Pennsylvania, must have been the probable cause. however! on January 15, 1997; Deputy Prothonotary Joan Steulak of the Supreme

Court of Pennsylvania attested an Order of that Court denying a Petition for Allowance of Appeal. (Dkt Entry 3; Apx 42a). Once again Probable Cause was extinguished on 15 Jan 97 and they (Lackawanna County) refused to lift the Restraining Order. If the Court of Equity had Jurisdiction what difference would that appeal make?

(13)
KK-21, 451a

XI

WITHOUT PROBABLE CAUSE THE RESTRAINING ORDERS MUST FALL: ORDER SUGGESTED (Dkt Entry 26; Ex A-9; Sup Apx 248a)

22) Because there is no Probable Cause and all possible reasons have extinguished; so then must the Restraining Orders Extinguish forthwith on this Appeal:

a) Probable Cause Malicious Prosecution Extinguished on 10/4/96 !

b) Probable Cause For Purposes of Construction Extinguished on 9/1/96 !

c) Probable Cause Case Pending Before the U.S. Sup Ct. Extinguished on 12 Jan 1998 !

d) Probable Cause apparently Petition Reconsideration Pa. Sup Ct., M.D. No. 0181 Dkt 1996 Extinguished on Jan 15, 1997 !

Because without probable cause there is no valid legal or judicial reason to restrain the Appellant Joseph R. Caterina, John Doe or Jane Doe other than to obstruct Justice & the Constitutional Rights of the

Appellants who have asserted their IV + XIV and VII + XIV Amendment Rights to the Constitution of the United States. However! the Court should consider the very strong possibility that the Appellants are being restrained soley for defending their lands through Rights enjoyed under rights and privileges secured by them under the Constitution and laws of the United States, or becauseof the Appellants herein having so exercised the same through 'due process' of law. cite: Title 18 USCA, Ch 13, Civil Rights § Sec 241 Conspiracy against rights of citizens and Sec 242 Deprivation of Rights under color of Law;(Dkt Entry 26; Ex CC-1 to CC-3; Sup Apx 387a, 388a, 389a); also cite: Notice

of Appeal; (Dkt Entry 14; Apx 215a) and Notice of Appeal; (Dkt Entry 13; Apx 213a)

XII

REASONS FOR SILENCE BY APPELLEES ET AL.

23) The Appellees and Related Parties have been restraining the 'Personums'of the Appellants without Probable Cause and without Jurisdiction and are circumventing the Constitution of the United States without 'due process' and are denying said rights and privileges secured by them under the IV, V, VII, IX,X & XIV Amendments of

the Constitution of the United States simpl because they asserted their 'Right to Trial by Jury' as was denied them and the 'Right to Remedy Under Common Law' that is being denied them as the Appellees lack any type of title to the lands in dispute and seized them in mere possession in an effort to sustain an illegal suit in Equity because the lands were inequitably acquired and wish to restrain the Title Owners long enough to perfect title in the future by prescription at the costs of the rights and privileges of the Appellants and that is repugnant to the Constitution of the United States: cite: (Dkt Entry 28; Ex HH-3 and JJ-2, JJ-3; Sup Apx 408a; 420a, 421a).

XIII

THE RELIEF REQUESTED BY USCA, 3rd Cir 24) The Court to 'rescind' FINAL ORDER 22 May 1996 In Equity, No. 60046-1996, Commmon Pleas Lackawanna County: (Dkt Entry 26 Ex A-3 to A-33; Sup Apx 269a, to 272a); thus lifting the restraining Order in question!

(15)

KK-23, 453a

Respectfully submitted,

Appellants In Pro Se

s/s
Joseph R. Caterina, In Pro Se

s/s
Frances Caterina, In Pro Se

s/s
Emmett Caterina, In Pro Se

s/s
Clara Caterina, In Pro Se

DATE: 17 July 2000

* foot note top page ø (6)

fn.1/ The ruling of the U.S. Supreme Court in Rich vs Braxton, 158 U.S. 375; specifically forbids judges from invoking equity jurisdiction to remove common law liens or any similar 'clouds of title'.

(Dkt Entry 3; Apx 38a,39a,40a,41a; filed 9 July 1997 and Apx 103a,104a,105a,106a)

ORIGINAL

Attest: True and Correct
Copy of Original
'Prothonotary of Necessity'

Dkt No.
3:MI-01-0189
USDC MD Pa

3:MI-01-0189

Filed
Scranton
Oct 31 2001
s/s RM
Deputy Clerk

FILED
SCRANTON
OCT 31 2001

country of Pennsylvania
Our One Supreme Court
Common Law Venue; Original & Exclusive Jurisdiction, A Superior Court Sitting with the Power of a Circuit & United States District Court in & for Lackawanna county, Pennsylvania state, united States of America

People in & for united States of America ex rel. Joseph R. Caterina Frances H. Caterina, Emmett A. Caterina & Clara A. Caterina; Demandants, Plaintiffs	:"In Law" Case # : C-02352-95 :FINDING OF FACT-:FINAL ORDER & JU-;DGEMENT; Appellate :Case#CIV No 1976 :YR 1993;Re:Statu-:tory Case#CIV 93-:0512;No 93-7565
vs	
United States et al; & all Whom it may Concern Respondents,Defendants	:USCA,3rd Cir; US :SUP CT # 94-1231

. . . . . .

FINDING OF FACT

Affidavit of Declaration Action to Quiet Title in Common Law for Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina & Clara A. Caterina was presented for publication and published for three consecutive weeks(see Exhibit M). No legal obejctions were recorded, and all parties who were known to possibly have an interest in this case were notified by registered mail (see Exhibit O). No one/party has responded.

That a Notice of praecipe for entry of Default Judgment was served upon all parties on the fifth day of the twelfth month,1995. Certified return receipt requested prepaid

mail through the United States Postal Service, of which all receipts were returned, whereas none of the parties have responded to the court within the required ten (10) day period to date. Therefore, all parties have defaulted knowing that they were in default and that a Judgment would be entered against them without a hearing and that they would lose important rights and property. (see Exhibit P)

FINAL ORDER AND JUDGEMENT

This action was instigated to determine who has venue and jurisdiction over Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina (see Exhibit "I"). Based on the doctrines of law, of this case, this court finds that Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina and Clara A. Caterina are NOT Federal Emergency citizens of the corporate U.S., nor a "subject" thereof. Therefore, Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina and Clara A. Caterina have chosen to proceed in their own right in Common Law.

(1)
E-1, 293a

ORIGINAL

Attested: True & Correct
Copy of Original
'Prothonotary of Necessity'

This Court hereby finds the Demandants Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina and Clara A. Caterina to have and to own the Highest Title in Common Law to their real property and all other property, therefore Quiet Title has been granted by Our One Supreme Court on this day forth. The Court hereby orders all other parties to cease and desist and restore the real property as detailed in exhibit "I" to Joseph R. Caterina, Frances H. Cat-

erina, Emmett A. Caterina and Clara A. Caterina upon this notice. This case is res judicata.

So agreed to and done this 16th day of December, 1995 AD.

Per-curiam	Mary Victoria Jane Muzzuco	1
Per-curiam	Dennis Michael Bohmier	2
Per-curiam	Nancy Mae Staltzfus Zook	3
Per-curiam	Melvin J. Hoffer	4
Per-curiam	Abner S. Smucker	5
Per-curiam	David Rivera	6
Per-curiam	Arnold Rhodes	7
Per-curiam	Dennis Gordon	8
Per-curiam	Jane Maureen Duffy	9
Per-curiam	William E. Rivera	10
Per-curiam	Floyd Ranck	11
Per-curiam	J. Claip Hoffer	12

united States of America)
Pennsylvania state) SS Acknowledg-
Lackawanna county) ment

Our One Supreme Court seal
Republic of the united States of America
Justices Court s/s Marshal Hasin

I, Robert Terrence Muzzuco s/s, a Notary, duly commissioned and privately bonded by the People in and for the united States of America for Pennsylvania state, hereby attest and acknowledge that the above jury(s) signatures are the ones chosen, and have been duly presented with facts a testimony in relation to the Character of the Party(s) and facts set forth in this Affidavit.

Fee $1.00 Robert Terrence Muzzuco s/s
Notary

seal
Notary Seal . Pennsylvania state

ORIGINAL

Attest: True and Correct
Copy Of Original
'Prothonotary of Necessity'

Case # C-02352-95

PARTIES SERVED A NOTICE OF FINAL ORDER AND JUDGEMENT

I, Joseph R. Caterina, special appointed Marshal, for our One Supreme Court hereby attest that the following parties were notified of the Final Order and Judgement on Case No. C-02352-95 by US Postal Service First Class Mail unless otherwise specified. All parties served by certified return receipt requested mail. Joseph R. Caterina s/s
DEC 23 1995 Special Appointed Marshal

Atty David Kurtz, L.A. Law Firm, P.O. Box 107-F, R.D. #4; Lake Ariel, PA. 18436
Edwin A. Abrahamsen, W.C. Carter Building, 205-207 N. Washington Ave., 2nd Floor; Scranton, Pennsylvania 18593
Atty. for Condemnor, (M. Colleen Foley Canovas) 600 Linden Street-P.O. Box 1180; Scranton, PA 18501-1108
Blakely Borough, et al., 1439 Main Street Borough Bldg.; Peckville, PA 18452
U.S. District Court, (M.D. of Pa.), P.O. Box 1148; Scranton, PA. 18501
DAVLISA Enterprises, 3 East McClure Ave.; Old Forge, PA 18518
The Office of Court Clerk Court of Common Pleas of Lackawanna County, Lackawanna County Courthouse; Scranton, PA 18500
U.S. Court of Appeals-Third Circuit, 601 Market Street, 21400 U.S. Courthouse; Philadelphia, Pa. 19106-1790
The Office of Court Clerk Supreme Court of the United States, 1 First Street N.E.; Washington, D.C. 20543

ORIGINAL Attest: True and Correct
Copy Of Original M.H.
"Prothonotary of Necessity" s/s-
Case # C-02352-95

PARTIES SERVED A NOTICE OF FINAL ORDER AND JUDGEMENT

I, Joseph R. Caterina, special appointed Marshal, for our One Supreme Court hereby attest that the following parties were notified of the Final Order and Judgement on Case No. C-02352-95 by US Postal Service First Class Mail unless otherwise specified. All parties served by certified return receipt requested mail. Joseph R. Caterina s/s DEC 23 1995 Jan 9 1996 Special Appointed Mar

Atty David Kurtz,L.A. Law Firm, P.O. Box 107-F, R.D. #4; Lake Ariel, PA. 18436
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The Office of Court Clerk Supreme Court of the United States,1 First Street N.E.; Washington, D.C. 20543
Atty General of PA, Atty E. Preate, 16th Strawberry Square.,Harrisburg,PA 17120
Michael J. Daley,ESQ Atty for General State Authority & Catherine A. Foley Esq.Atty Dept General Services,Dept Transportation, Dept of Environmental Resources; 603 North Office Bldg., Harrisburg, PA. 17125
Senator Pro Tem Robert C. Jubelirer, 30th District, Senate P.O., Main Capitol Bldg Harrisburg, PA 17120-0030

(Dkt Entry 28; Sup Apx 379a,380a,381a filed 6/13/00)

JF 37

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANNE GRAHAM : CIVIL ACTION
: FILED
v. : April 19 2000
: Michael E.Kunz*
TOLTZIS COMMUNICATIONS, INC., ET AL. : Bymld Dep. Clerk
No.98-6269

MEMORANDUM AND ORDER *Clerk

FULLAM,Sr.J. April 18,2000

seal

A True Copy Certified To From the Record
DATED; 06/06/00 Attest: Criptal Wardlaw

Defendants in this action have moved to strike plaintiff's demand for a jury trial of her claim of pregnancy discrimination in violation of the Pennsylvania Human Relations Act (PHRA), 43 P.S. § 951 et seq., in light of the recent decision of the Pennsylvania Supreme Court in Wertz v. Chapman Twp.,741 A.2d 1272(Pa. 1999). In Wertz, the Court held that neither the PHRA nor the Pennsylvania constitution provides a right to jury trial for claims arising under that statute.(It is undisputed that plaintiff has a right to a jury trial of her Title VII claim.)

Courts in this district have long predicted that the Pennsylvania Supreme Court would find that the state legislature intended to make a jury trial available under PHRA. See Wertz, 741 A.2d at 1277(citing cases). Although it is now evident that this prediction was incorrect insofar as Pennsylvania law is concerned, the right to a jury trial in federal court is a matter of federal law.See Simler v Conner, 372 U.S. 221,222(1963). In an action in federal court for money damages pursuant

cc: Legal, opinions ENTERED:4/19/00
pies by FAX on: 4/19/00:See A.Pfnlied?

(1)

EXHIBIT Z Z-1, 379a

(A-63)

to the PHRA, a plaintiff has an independent right, guaranteed by the Seventh Amendment of the United States Constitution, to trial by jury. See Lubin v American Packaging Corp.,760F. Supp. 450(E.D. Pa. 1991); Galeone v. American Packaging Corp., 764 F. Supp. 349(E.D. Pa. 1991). The Supreme Court of Pennsylvania does not have the power to alter outcome; nor did it purport to do so. See Wertz, 1278-79 & n.5.

An Order follows

(2)
Z-2, 380a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANNE GRAHAM	:	CIVIL ACTION No.98-6269
	:	FILED
v.	:	Apr 19 2000
TOLTZIS COMMUNICATIONS, INC., et al.	:	Michael E. Kunz,Clerk By M.L.D. Dep.Clerk

O R D E R

AND NOW, this 18th day of April, 2000, IT IS ORDERED that defendants' motion to strike plaintiff's jury demand in connection with her claim pursuant to the Pennsylvania Human Relations Act(PHRA) is DENIED.

John P. Fullam s/s
Fullam, Sr.J.

4/19/00

K. Reilly, K. Hoff, C. Barbieri s/s ;
D. Hackett, T. Evans s/s

X

(3)
Z-3, 381a

(A-64)

(Dkt Entry 5; filed July 17, 1998; Apx 125a)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 12, 1998

Mr. Thomas Michael Marasilio
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510

Re: Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, and Clara Caterina
v. Blakely Borough, et al.
No. 97-102

Dear Mr. Marsilio:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/s

William K. Suter, Clerk

(Dkt Entry 5, Apx p 130a; filed July 17,1998
(Dkt Entry 8, Apx p 204a; filed July 13,1999

1997 Edition

FEDERAL
CIVIL JUDICIAL
PROCEDURE and RULES

Federal Rules:
Civil Procedure Title 28, Judiciary and Judicial Procedure

West Publishing Company

. . . . . .

p 180

Rule 38. Jury Trial Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate. *

. . . . . .

Apx p 130a, Apx p 204a

---

* Article VII

Constitution of the United States

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of common law."

EXHIBIT A Sup Apx, A-30, A-21, A-32, A-33; Sup Apx 269a,270a,271a,272a;(Dkt Entry 26, filed May 24, 2000)

COURT OF COMMON PLEAS LACKAWANNA COUNTY
COMMONWEALTH OF PENNSYLVANIA

Dept of General Services Commonwealth of Pennsylvania, Plaintiff	: No60046-1996
Joseph R. Caterina, as an individual, John Doe and Jane Doe, an All Other Persons Acting in Concert with the Named Participant or Otherwise Participating in their Aid, Defendants	: Filed for Record May 22 11:43 AM 1996 Wm. P. Rinaldi Clerk of Judicial Records SX s/s In Equity

FINAL ORDER

AND NOW, this 22nd day of May, 1996, the Plaintiff having presented its Complaint in Equity & Petition seeking a Permanent Injunction against the Defendants, & it appearing to the Court from the averments of the Complaint & from the testimony presented that immediate & irreparable injury will be sustained if this Court's Order dated May 17, 1996, is not confirmed as a Permanent Injunction Order, it is hereby ORDERED AND DECREED:

1) That a Permenent Injunction shall issue enjoining & restraining the Defendant & all persons acting in concert with him otherwise participating with him or acting in his aid or behalf, from:

a) Interfering with the ingress to and egress from Plaintiffs flood control project site in the Borough of Blakely, Lackawanna County, of any of Plaintiffs employees, contractors, and of other persons

(1)

who may have lawful occasion to enter or leave or use said construction site;

b) Using violence, coercion, threats, abusive language, or other unlawful means to intimidate or otherwise interfere with any of Plaintiffs employees, contractors, or other persons, in their entrance into, or exit from, or their attempt to enter into or exit from, the Plaintiffs flood control construction sit, on business or otherwise;

c) Blocking, restricting or interfering with the passage of persons on foot or in vehicles in, into and from enterance or roadway leading into ot out of Plaintiffs flood control construction site by means of vehicles or other obstructions, including the use of object likely to puncture tires;

d) Being on or about Plaintiffs flood control construction site;

c) Ordering, encouraging, aiding, abetting or assisting in any work stoppages at Plaintiffs flood control construction site by means of violence or threats of violence and from coercing or intimidating, by violence or threats of violence, Plaintiffs employees, contractors, and other persons having lawful business at Plaintiffs construction site, from entering or performing work on the project.

2) That the Sheriff of the County of Lackawanna and the appropriate local police officials and the Pennsylvania State Police be and are hereby directed, unless and until otherwise ordered by this Court, to take such measures as are necessary to enforce and continue to enforce the terms of the foregoing Injuction; and are specifically directed to remove, and if necessary to arrest, any persons who in any way

interfere with, block, obstruct, or attempt to interfere with, block or obstruct, ingress to and egress from Plaintiffs flood control construction site by any of Plaintiffs

employees, contractors, and of other persons who may have lawful occasion to enter or leave said flood control construction site, in violation of said Injunction.

3) That this Permanent Injunction shall be effective immediately and shall continue p-erpetually until further order by this Co-urt.

4) That a true but uncertified copy of this Order and Rule may be served upon the Defendant.

5) That Plaintiff has leave to serve add-itional true but uncertified copies of th-is Order upon any of the Defendant and up-on any of the persons acting in concern with him or otherwise participating with him or acting in his aid or behalf.

s/s
Cottone, S.J.

EXHIBIT A Sup Apx, A-33; Sup Apx 272a; (Dkt Entry 26, filed May 24, 2000)

COURT OF COMMON PLEAS OF LACKAWANNA CO.
COMMONWEALTH OF PENNSYLVANIA

Department of General Services, Commonwealth of Pennsylvania, Plaintiff	:	No. 60046-1996
Joseph R. Caterina, as an individual, John Doe and Jane Doe, and All Other Persons Acting in Concert with the Named Participant or Otherwise Participating in their Aid, Defendants	:	In Equity

PRAECIPE FOR
REINSTATEMENT OF PROCESS

To the Clerk of Judicial Records:

Kindly reinstate the Complaint in the above captioned matter.

s/s
Elizabeth A. O'Reilly
Atty For Plaintiff

Dated: June 12, 1996

Filed for Record
Jun 17 12:34 PM '96'
William P. Rinaldi
Clerk of
Judicial Records
jaw
s/s

Sup Apx A-32, 272a

EXHIBIT A Sup Apx, A-21; Sup Apx 260a;(Dkt Entry 26, filed May 24, 2000) A-27, Sup Apx 266a

OFFICE OF THE SHERIFF
John Szymanski- Sheriff
Lackawanna County-Scranton Pennsylvania
18503- (717) 963-6719

IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY

Complaint & Order No. 96EQU60046

Dept. General Services , Plaintiff

vs

Joseph R. Caterina , Defendant

- -

COMMONWEALTH OF PENNSYLVANIA:
County of Lackawanna: SS:

Now, This 24 Day of May, 1996, I hereby Certify and Return That after Diligent Search and Inquiry, I have been unable to locate the within named Defendant(s), Joseph R. Caterina , within the limits of Lackawanna County and State of Pennsylvania, nor to ascertain his present whereabouts, and I do therefore return the within Complaint & Order ,'Not Found' as to the said Joseph R. Caterina, Defendant(s).
So Answers, John Szymanski, Sheriff
Deputy: s/s
Chester Ciepeliski Filed For Record
Aug 5 11:09 AM '96'
William P. Rinaldi
Clerk of
Judicial Records
s/s

EXHIBIT A Sup Apx, A-18, A-19, Sup Apx 257a, 258a;(Dkt Entry 26, Filed May 24, 2000)

Fax: Dec-24-1997 12:01 From DGS Chief Counsel to 87179636477 P.02, P.03

VIA FACSIMILE TRANSMISSION
717/963-6477
Hon. Carlon M. O'Malley

Seal
Commonwealth of Pennsylvania
Department of General Services Harrisburg

December 24, 1997

Re: Dept of General Services, Com of PA. v. Joseph R. Caterina, Dkt No.60046-1996

Dear Judge O'Malley:

I received a copy of Mr. Caterina's Memorandum Suggesting that the Cause is Moot, Special(Immediate) Relief Requested which was filed yesterday. Subsequently, I received a phone call from Mr. Caterina requesting that DGS agree to the Order attached to Mr. Caterina's Memorandum. I understand from Mr. Caterina that you are awaiting confirmation from the Commonwealth that the Temporary and Permanent Orders restraining Mr. Caterina are moot.

The Commonwealth obtained these restraining orders to prevent Mr. Caterina from interfering with a flood control project. The project is now complete. We have no objection to Mr. Caterina visiting his parents' house so long as he does not trespass upon or interfer in any manner with the flood control channels which have been placed on the (~~his~~) property. Since the case, such as it is, is still pending before the U.S. Supreme Court, Mr. Caterina's proposed order may

not be appropriate. We respectfully submit an alternative order, which is attached with this letter. If you require any additional information, we can be reached at (717) 783-3280.

Sincerely,

s/s

Catherina A. Foley
Assistant Counsel

s/s

Elizabeth A. O'Reily
Assistant Counsel

EXHIBIT A Sup Apx, A-10, Sup Apx 249a,(Dkt Entry 26, Filed May 24, 2000)
FAX Dec-24-1997 12:01 From DGS Chief Counsel to 87179636477 P.4

Department of General Services, Commonwealth of Pennsylvania, Plaintiff vs.	:	No. 60046-1996
Joseph R. Caterina, as an individual John Doe and Jane Doe, and all other Persons Acting in concert with the named participant or otherwise in their aid, Defendant	:	In Equity

ORDER

On this 24th day of December, 1997, It is hereby ordered that Joseph R. Caterina is hereby permitted to enter his parents' house but not to enter upon any portion of the Wildcat Creek Flood Protection Project constructed adjacent to his parents' house.

O'Malley s/s J.

Total P.04

Sup Apx A-10, 249a

EXHIBIT A Sup Apx, A-6, Sup Apx 245a; (Dkt Entry 26, Filed May 24, 2000)

LACKAWANNA COUNTY

DISTRICT ATTORNEY'S OFFICE

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT
	:	OF COMMON
VS.	:	PLEAS
	:	COUNTY OF
JOSEPH CATERINA	:	LACKAWANNA
	:	96 S. 77

O R D E R

AND NOW, this 4th day of October, 1996, IT IS HEREBY ORDERED AND DECREED that the summary appeal in the above mentioned case has been granted.

BY THE COURT,

WALSH, P. s/s J.

CERTIFIED FROM THE
RECORDS THIS DAY
WILLIAM P. RINALDI
CLERK OF COURTS

PER J. Sambro ? s/s

FILED FOR RECORD
Oct 4 1:35 PM '96'
William P. Rinaldi Clerk of Judicial Records
Sup Apx A-6, 245a

(Dkt Entry 3, Apx P. 47a and Apx P. 102a; Filed July 9, 1997, 10:50 AM)

IN THE COURT OF COMMON PLEAS OF
LACKAWANNA COUNTY

In Re: In Rem

Condemnation of Lands of	:	IN REM
Joseph R. Caterina	:	
Frances H. Caterina	:	No. 1976
Emmett A. Caterina	:	Year
Clara A. Caterina	:	1993
	:	
Situate in Blekely Borough	:	J. Cottone
Lackawanna County	:	
Pennsylvania	:	
Phase II Alleged Flood Project	:	
. . . . .	:	. . . . .

Now on this 3rd day of September 1993 ?

Petitioner granted 'Writ of Possession' upon lands of Joseph R. Caterina, Frances H. Caterina, Emmett A. Caterina, and Clara A. Caterina; to Redevelopment Authority of the County of Lackawanna, acting as agent for Borough of Blakely.

BY THE COURT

_____
Cottone, J.

Note: Alledged order in lieu of Never received an 'Order' to date EXHIBIT'Order'

Apx P. 47a and P. 102a

EXHIBIT B, Sup Apx B-1, Sup Apx 273a;(Dkt Entry 26, filed May 24, 2000)

seal

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

December 8, 1999

Mike Fisher
Attorney General

Appellate Litigation Sec.
15th Fl., Strawberry Sq.
Harrisburg, PA 17120
(717) 783-6709
(717) 772-4526 FAX

Lynn M. Caswell, Case Manager
United States Court of Appeals
for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: Caterina v. Unified Judicial System No. 99-3793 (3d Cir.)

Dear Ms. Caswell:

I write in response to your most recent letter concerning this matter. Two entities were designated as state defendants in the district court, but neither was served. Further, there are no such entities as the "Unified Judicial System" and the "General State Authority". Consequently, this office will not participate in the appeal.

Very truly yours,

s/s

CALVIN R. KOONS
Senior Deputy Atty General

lls
cc: Joseph R. Caterina
Frances Caterina
Emmett Caterina
Clara Caterina

EXHIBIT B

B-1

Sup Apx B-1, 273a

EXHIBIT B, Sup Apx B-2; Sup Apx 274a;(Dkt Entry 26, filed May 24, 2000)

PURDON'S
PENNSYLVANIA CONSOLIDATED STATUTES
ANNOTATED
TITLE 42
JUDICIARY and JUDICIAL PROCEDURE
§§ 101 to 1700

Chapter 3
GENERAL STRUCTURE AND POWERS

Subchapter
A. Unified Judicial System
B. General Provisions Relating to Courts

SUBCHAPTER A

UNIFIED JUDICIAL SYSTEM

Sec.
301. Unified judicial system

The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the:

(1) Supreme Court.
(2) Superior Court.
(3) Commonwealth Court.
(4) Courts of common pleas.
(5) Community courts.
(6) Philadelphia Municipal Court.
(7) Pittsburg Magistrates Court.
(8) Traffic Court of Philadelphia.
(9) District justices.

All courts and district justices and their jurisdiction shall be in this unified judicial system. 1976, July 9, P.L. 586, No.142, § 2, effective June 27, 1978

Official Source Note: Historical Note
Substantially a renactment of Constitution, Art V, § 1.

Library References
Courts key 41. C.J.S. Courts § 120 et seq.

EXHIBIT B, Sup Apx B-3, Sup Apx 275a;(Dkt Entry 26, filed May 24, 2000)

71 P.S. § 1707.4b. General State Authority as agent for Commonwealth

The Authority shall also have power to act as agent for the Commonwealth, when by the Governor, in the acquisition, construction, improvement, equipping, furnishing or maintenance of any project now or hereafter specifically itemized in a capital budget, including the acquisition by purchase, or pursuant to the power of eminent domain conferred by this act, in the name of and on behalf of the Commonwealth of Pennsylvania of any property, real, personal, or mixed deemed necessary or advisable in connection with any project in which it acts as agent for the Commonwealth, provided, however, the powers herein granted shall not cover any project upon which any proceeds of any bonds issued by the Authority have been or may hereafter be expended.

It shall not be necessary for the Authority to lease to the Commonwealth any such projects in which it has so acted as agent nor to hold title to such projects or properties.

1949, March 31, P.L. 372, § 4.2, added 1970, Nov. 25, P.L. 705, No. 229, § 1.

Library References

States key 67.
WESTLAW Topic No. 360.
C.J.S. States §§ 120, 121, 136 to 140.

71 P.S. § 1707.5. Purpose and powers;bonds
Such bonds are hereby made securities in which all officers of the State and its political subdivisions and municipal officers and administrative departments, boards and commissions of the Commonwealth, all banks, bankers, savings banks, trust companies, ...

US Ct Ap, 3rd Cir filed as No. 99-3793(Appe
(Dkt Entry 23; Apx p 228a,229a; filed 13 Se

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	: CIVIL ACTION : No. 3:CV-97-242
v	: Filed SCRANTON : Sept 13 1999
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUthority;(BLAKELY BOROUGH);	: Per RMT : Deputy Clerk

NOTICE OF APPEAL #3

The Court is hereby put on notice that an appeal is taken regarding ORDER 27 August 1999, Re: 'Nunc Pro Tunc Motion for Reconsideration'; (doc.12) Denied!

Review by the Supreme Court of the United States was crucial to the perfection of our asserted Rights to Common Law Remedy; viz. 'Right to Trial By Jury', as the Statutory Remedy; the right to appeal; was exhausted; thus! validating our Right to Trial by Jury under the VII Amendment of the Constitution of the United States.

The granting of Certiorari was not crucial, BUT! the exhausting of the Statutory Remedy under the LAW; in this case the right to appeal because of the absence of an remedy; thereof; was crucial!(emphasis add

F.R.C.P. No. 4 obstructed our rights secured under the Constitution of the United States by abrogating them prem-maturely!

(1)

see (A-82) herein (Dkt Entry 18) Apx 228a
see (A-84) herein (Dkt Entry 12) 223a
217a

BEST AVAILABLE COPY

US Ct Ap, 3rd Cir filed as No. 99-3793(Appeal #3)
(Dkt Entry 23; Apx p. 229a;filed 13 Sept 99

Cite: "Where rights secured by the Constitution are involved, there can be no rule making or legislation which abrogate them." (emphasis added) Ernesto A. Miranda v. State of Arizona, 348 US 433; 86 Sup Ct Rep 1602, cite n.73 @ 1608.

Judge William Caldwell and his Law Clerks are wrong and must be reversed in the interest of justice as they pre maturely prejudged the merits of the Case and obstructed our Constitutional 'right to trial by Jury' and our 'statutory right to remedy under the Law'.

The pendency of the Certiorari Petition and Rehearing had very great bearing as its' exhaustion was crucial! thus meriting the delay of service until perfected!

The Court was given prompt Notice of the filings as copies were docketed of the Writ of Certiorari and Petition Rehearing in this case. (See the docket entries in the record)

The advice that the Court gave the Plaintiffs was erroneous under the circumstances of the case scenario and abrogated both the Constitutional and Statutory Remedy Law Rights of the Plaintiffs as initated thru the use of F.R.C.P. Rule No. 4! Said Rule should have been suspended to permit the Remedy to be asserted!

Respectfully submitted

s/s

Joseph R. Caterina, Plaintiffs et al
Frances Caterina, Emmett Caterina, Clara Caterina, s/s
DATE: 13 September 1999

(2) Apx 229a

Incls: Order 27 Aug 1999 see (A-82)herein
see(A-84,85) herein(Dkt Entry 12) 217a
see(A-98) herein and (A-96,97) herein

US Ct Ap, 3rd Appeal No. 99-3793, see(A-12) US Sup Ct No 00-1390 Rehearing fn.1, denied see (A-109)herein

(Dkt Entry 18) filed Aug 27, 1999; Ap 223a, 224a; USCA, 3rd No. 99-3793 (Appeal # 3)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs, v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants.	:CIVIL ACTION :No. :3:CV-97-242 : Filed :Harrisburg, PA :Aug 27 1999 :Mary E Dandera :Per s/s Deputy Clerk

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

We are considering the plaintiffs' nunc pro tunc motion for reconsideration of our order of July 22, 1997, which dismissed the case without prejudice for failure to effect timely service of process, and our order of July 29, 1998, which denied a motion for clarification.

The basis of the reconsideration motion is that we should not have dismissed the case because at the time we did so the plaintiffs had a petition for writ of certiorari pending in the United States Supreme Court that influenced the plaintiffs in not complying with the time requirements of Federal Rule of Civil Procedure 4 for effecting service.

(1)

Apx 223a

see (A-81) herein, opinion USCA, 3rd; Judgment/Opinion Dec 7, 2000(99-3689,3690) see (A-84,85) herein and (A-81),(99-3793) herein bottom reference to fn.1 referenced

(Dkt Entry 18) filed Aug 27, 1999; Apx 223a, 224a; USCA, 3d No. 99-3793 (Appeal # 3)

We reject this contention. The pendency of such a petition has no bearing on timely service of process of a lawsuit that the plaintiffs elected to initiate while they pursed that petition.

However, we advise the plaintiffs that their previous lawsuit was dismissed without prejudice. Therefore, if they wish* to pursue their claim, they may file another case. Service of process should comply with federal Rule 4 and Local Rule 4.1 as to timeliness and perfection of service of the defendants.

AND NOW, this 27th day of August, 1999, it is ordered that the plaintiffs' nunc pro tunc motion for reconsideration (doc. 12) is denied.

s/s
William W. Caldwell
United States District Judge

(2)

Apx 224a

*(emphasis added)
by Plaintiffs

* Note: Nihil Dicit Judgment 3:MI-01-0189 filed USDC MD Pa. see (A-58) herein, Also! Judge has inability to comply with this ORDER along with Plaintiffs.

(A-83)

(Dkt Entry 12) filed Aug 16, 1999; Apx p.217a 218a; USCA, 3rd No. 99-3793 (Appeal # 3)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs; v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; AND RELATED PARTIES Defendants.	:CIVIL ACTION :No. :3:CV-97-242 : Filed : SCRANTON :Aug 16 1999 : R M :Per s/s :Deputy Clerk

NUNC PRO TUNC

RECONSIDERATION ORDER 22 JULY 1997 and ORDER 29 July 1998

1) Plaintiffs request the Court to Reconsider ORDER 22 July 1997, dismissed with out prejudice, because the Plaintiffs filed Writ of Certiorari on 15 April 1997 with the Sup Ct of the United States and no acknowledgement of said filings was received until 31 July 1997; wherein said District Court Order time barred the Plaintiffs wherein the Plaintiffs had no control over the Supreme Court of the United States & therefore Federal Rules of Civil Procedure, Rule 4 should be suspended under the circumstances inorder to protect the 'Due Process Rights' of the Plaintiffs in this case their 'Right to Appeal', which was their right to Remedy under the Law. The Court's Ruling acted as an Obstruction to 'Due Process'. The Court should have suspended the Rule 4 until such time that the Supreme Court of the United States acknowledged the Plaintiffs Filings. The Court is requested to Suspend FRCP No. 4 on reconsideration! (1) Apx p 217a

(Dkt Entry Entry 12) filed Aug 16, 1999; Apx p.217a 218a; USCA,3rd No. 99-3793 (Appeal # 3)

2) Plaintiffs request the Court to Reconsider ORDER 29 JULY 1998, 'Motion for Clarification' denied, because the Plaintiffs were Denied Trial by Jury by the Defendants and inorder to secure; Under the VII Amendment of the Constitution of the United States; said right! they must First Exhaust their Remedy under the Law and in the absence thereof their Right to Appeal is construed to be their Statutory Remedy that was exhausted, thus! validating the assertion of their Common Law Remedy, viz, 'Right to Trial by Jury' & the Court should not have Denied their 'Motion for Clarification' in as much as the Case is unique and of First Impression and requires Clarification as to procedural processes available to the 'Pro Se' Plaintiffs! The Court is requested upon Reconsideration to grant the 'Motion for Clarification' and to Suspend the Rules that Barred their requist!

3) The Court has obstructed the Plaintiffs Right to Trial By Jury by Dismissing, the Action that could not proceed (emphasis added) until the Statutory Remedy was exhausted and the Court should Not have denied the Plaintiffs' 'Motion for Clarification'; because of the uniqueness of the assertion of Right to Trial By Jury of the Plaintiffs; said Motion should have been granted under the circumstances of their Cause of Action!

Respectfully Submitted,
Joseph R. Caterina, Plaintiffs et al s/s
Emmett Caterina, Frances Caterina, Clara Caterina s/s
DATED: 16 August 1999
Incls: Order 22 July 1997 Apx p 219a
Order 29 July 1998 Apx p 220a
see (A-98) herein (Dkt Entry 4) 124a
see (A-95) herein (Dkt Entry 7) 197a
(2) Apx p 218a
see (A-81) opinion USCA,3rd No 99-3689,3690; Judgement/Opinion Dec 7, 2000(99-3793)

(Dkt Entry 14) filed Aug 13,1999;Apx p 215a; USCA 3rd, No. 99-3690 (Appeal # 2)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA,	:CIVIL ACTION
FRANCES CATERINA,	:No.
EMMETT CATERINA,	:3:CV-97-242
CLARA CATERINA,	:
Plaintiffs	: Filed
v	:Scranton
UNIFIED JUDICIAL SYSTEM OF	:Aug 13 1999
THE COMMONWEALTH OF PA and	:Per s/s
RELATED PARTIES; LACKAWANNA	:Deputy Clerk
COUNTY REDEVELOPMENT AUTH-	:
ORITY: PA GENERAL STATE A-	:
UTHORITY; BLAKELY BOROUGH	:
AND RELATED PARTIES	:

NOTICE OF APPEAL #2

The Court is hereby put on notice that an appeal is taken regarding ORDER 28 July 1999 Re: "Motion for Reconsideration", Dismissed!

Trial Court established a 'Moot' tangent and is restraining Plaintiff(s) 'without probable cause' and is abusing process to aid and abet the Criminal Acts of the Defendants and to obstruct the justice due Plaintiffs in a Conspiratorial manner to deny Plaintiffs Due Process! (Cite Moot Action No. 60046-1996 Common Pleas. Lacka. Co., Equity). The(i)r is no valid legal or judicial reason to Restrain the Defendant(s) Joseph R. Caterina and or John Doe (and Jane Doe) other than to obstruct justice!

Plaintiffs have asserted various statutory rights and the Unified Judicial System of Pennsylvania has chosen (to) ignor the equal protection of these various rights under the Law! Respectfully submitted,
Joseph R. Caterina, Plaintiffs et al s/s
Emmett Caterina, Clara Caterina, Frances
Dated: 13 Aug 1999 Caterina
cc: Order 28 July 99 see (A-88) herein 215a
(A-86)

(Dkt Entry 13) entered Aug 13, 1999;Apx p 213a
USCA, 3rd, No 99-3689 (Appeal # 1)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION :No. :3:CV-97-242 : Filed Scranton Aug 13 1999 Per s/s Deputy Clerk
v	
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH AND RELATED PARTIES Defendants	

NOTICE OF APPEAL #1

The Court is hereby put on notice that an appeal is taken regarding ORDER 16th July 1999 Re: 'Confirmation', Stricken!

Plaintiff(s) is/are being restrained by Trial Court without (probable) cause and Defendants Agent, Trial Court, has been non-responsive and is attempting to obstruct justice via abuse of process!

Federal Rules of Civil Procedure time Bar Plaintiffs, but Trial Court, Agent of Defendants has no Time Bar!

Rule of Court (FRCP Rule 4) should be suspended in order not to obstruct justice.

Respectfully submitted!
Joseph R. Caterina s/s
Plaintiffs et al, Emmett Caterina, Clara Caterina, Fran Caterina s/s.
DATE: 13 Aug 1999

Apx p 213a

cc: Order 16 July 99 see (A-91) herein
(A-87)

(Dkt Entry 11) filed July 28, 1999; Apx p 21
USCA, 3rd No. 99-3690 (Appeal # 2)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH	:CIVIL ACTION :No. :3:CV-97-242 : :Filed :Harrisburg,PA :Jul 28 1999 :Mary E Dandrea :Clerk :Per s/s :Deputy Clerk

O R D E R

AND NOW, this 28th day of July, 1999, the plaintiffs' motion for reconsideration is dismissed. The court also informs the plaintiffs that although the document entitled "Confirmation" is stricken, it does remain on the record.

s/s
William W. Caldwell
United States District Judge

(1)

see (A-89) herein Apx p 212a

(Dkt Entry 10) filed July 26 1999; Apx p 208a & 209a; USCA, 3rd No. 99-3689,99-3690 (Appeal #1 & #2 Consolidated)

IN THE UNITEDSTATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION No. 3:CV-97-242
v	: Filed Scranton July 26 1999
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE Authority; BLAKELY BOROUGH Defendants	: Per O y s/s Deputy Clerk

REQUEST FOR RECONSIDERATION ORDER 16 July 99

The Plaintiffs wish the Court to consider that the Rules of Court are promulgated to promote the effective administration of Justice and not as an instrument to deny or obstruct justice at the convenience of the Clerks on behalf of the Court and its' Judges!

In view and in light of the document entitled 'Confirmation'; it is not too difficult to realize that Defendants through the Agents of the so-called Unified Judicial System of Pennsylvania, in this case the Trial Court, are abusing process to deny and obstruct justice!

The Court herein, by (striking) the document, are in effect validating the wronful acts of the Defendants and aiding and abeting the Defendants acts.

We wish the Court to let the document stand in the record

(Dkt Entry 10) cont.
as evidence of said abuse of process wherein one of the Plaintiffs has been unlawfully restrained and the PA General State Authority is in possession of stolen property wherein said property must be returned to its' rightful owners, the Plaintiffs herein, because of the criminality of their acts.

The Rules of Court are requested to be suspended so as not to Deny Justice to the Plaintiffs who have no control over the Trial Court and their non-responsive policy!

The Postition of the Plaintiffs is that all of the Acts of the Trial Court are moot and nugatory at face including the Restraining Order on Plaintiff Joseph R. Caterina and John Doe (and Jane Doe) as it is without probable cause and lacks jurisdiction and that justice delayed is justice denied!

For the foregoing reasons the Plaintiffs request the Court to Reconsider their ORDER dated 16 July 1999 and to let the document Confirmation stay in the record because Federal Rule of Civil Procedure No. 4 may not apply because of the wrongful abuse of process of the Defendants' Trial Court under the circumstances of this case! 1/n

Respectfully submitted,

s/s

Joseph R. Caterina, Plaintiffs et al

s/s

cc: Emmett Caterina DATED 26 July 1999
Atty Thomas Marsilio/Kisailus Law Offices
15 Darling St., Wilkes-Barre,PA 18702-2510

1/n Documents filed with Request for Reconsideration Order 16 July 1999 as follows: 1) Confirmation filed Jul 13 1999 (Dkt 8) see(A-92) herein 198a; 2) Order 16 Jul 99 (Dkt 9) see (A-91) herein 207a; (210a,211a)

(Dkt Entry 9) filed 16 July 1999; Apx p 207a
USCA, 3rd Cir No. 99-3689 (Appeal # 1)
Consolidated with USCA, 3rd Cir No. 99-3690
(Appeal # 2)

IN THE UNITED STATES DISTRICT CT.
FOR THE MIDDLE DISTRICT OF PENNSYLAVNIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION :No. :3: CV-97-242 :
v	: Filed :Harrisburg PA :Jul 16 1999 :Mary Dandrea : Clerk
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; BLAKELY BOROUGH Defendants	:Per mm s/s :Deputy Clerk

O R D E R

AND NOW, this 16th day of July, 1999 a document entitled "Confirmation" filed by the plaintiffs on July 13, 1999, is stricken since this case was dismissed on July 22, 1997, and there are no proceedings pending in this court.

s/s
William W. Caldwell
United States District Judge

(1) Apx p 207a

see (A-92) herein

(Dkt Entry 8) filed 13 July 1999; Apx p 198a
USCA, 3rd Cir No. 99-3689 (Appeal # 1) and
USCA, 3rd Cir No. 99-3690 Consolidated (#2)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA FRANCES H. CATERINA EMMETT CATERINA CLARA CATERINA Plaintiffs, v UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY;(PA GENERAL STATE AUTHORITY); BLAKELY BOROUGH	CIVIL ACTION No. 3:CV-97-242 Filed Scranton Jul 13 1999 s/s Per Deputy Clerk

CONFIRMATION

1) Pursuant to Order 22 July 1997,'Dismissed Without Prejudice' & subsequent ORDER* 29 July 1998,'Motion for Clarification-denied; the Clerk & I are unable , with specificty to locate a Rule defining the time limit within which to proceed without being in default.

2)*Via ORDER 12 Jan 1998 the US Sup Ct perfected our Right to Remedy under Common Law, as we exhausted our statutory remedy, in the absence of any is construed to be the right to appeal!

3)The Trial Court, since 23 Dec 1997,has been unable to deny or rebut our'filings moot'declaring all their actions nugatory at face;including restraining ORDER without cause, probable or otherwise.

4)Because of the lack of response by the Trial Court to date, it is not practicable to proceed withthis matter at this immediate time.

5)It would appear that the Trial Court is unable to come up with a valid legal or judicial reason to support any or all of their actions, including jurisdiction.

* see(A-95) herein Apx p 198a (cont.)

(Dkt Entry 8) filed Jul 13 1999; Apx p 198a;
(confirmation cont.)

6)We have been denied Trial by Jury, Right to Remedy, Due Process and I have been Restrained without Probable Cause by a Trial Court that denied Service and lacks Jurisdiction! Said Trial Court has been non-responsive to date, (since 23 Dec 1997)!

7)We request confirmation that we can proceed with this matter and are not yet in default with regard to ORDER 22 July 1997.

Respectfully Submitted
s/s
Joseph R. Caterina, Plaintiffs et al
s/s
Emmett Caterina

DATED: 13 July 1999
*US Sup Ct No. 97-102 (Apx p 202a)

cc: Atty Thomas Marsilio/
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510 1/n

1/n documents filed with confirmation as follows:

1) Order 22 July 1997 (Dkt Entry 4)
see (A-98) herein. Apx p 199a
2) Order 29 July 1998 (Dkt Entry 7)
see (A-95) herein. Apx p 200a
3) Motion For Clarification 17 Jul 1998
(Dkt Entry 5)
see (A-96) herein. Apx p 201a
4) Order US Sup Ct 12 Jan 1998#97-102
Rehearing Denied (Dkt Entry 5)
see (A-94) herein. Apx p 202a
5) US Sup Ct No. 97-102 cover Petition
for Rehearing (Dkt Entry 5 and 6)
see (A-96) herein. Apx p 203a
6) FRCP Rule 38(a), 1997 FRCP
(Dkt Entry 5)
see (A-96) herein. Apx p 204a,205a,
206a

(Dkt Entry 8) Filed July 13 1999; Apx p 202a attachement; USCA, 3rd Cir No 99-3689 (Ap #1

(Dkt Entry 5) filed 17 Jul 1998; Apx p 127a Attachment with Motion For Clarification

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

January 12, 1998

Mr. Thomas Michael Marsilio
Kisailus Law Offices
15 Darling Street
Wilkes-Barre, PA 18702-2510

Re: Joseph R. Caterina, Frances H. Caterina, Emmett Caterina, and Clara Caterina v. Blakely Borough, et al.
No. 97-102

Dear Mr. Marsilio:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/s

William K. Suter,

Clerk

(1) Apx p 127a

(Dkt Entry 7) filed July 29 1998; Apx p 197 a, USCA, 3rd Cir No 99-3793 (Appeal # 3) herein

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION :No. :3:CV-97-242
v	Filed Harrisburg, PA Jul 19 1998 Mary E Dandrea Clerk Per s/s Deputy Clerk
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On July 22, 1997, we dismissed this matter without prejudice, based on Plaintiffs' failure to effect timely service of the complaint pursuant to FRCP Rule 4. Now before us is a document filed by Plaintiffs titled "Motion for Clarification," * which does not indicate the relief Plaintiffs are seeking. The Order of July 22, 1997, speaks for itself and does not require 'clarification.'

Accordingly, this 29th day of July, 1998, it is ordered that Plaintiffs' "Motion for Clarification," filed July 17, 1998 (Doc. No. 5), is denied.

s/s
William W. Caldwell
United States District Judge

* see (A-96) herein(1) Apx p. 197a

(Dkt Entry 5) filed 17 Jul 1998; Apx p 125a USCA, 3rd Cir No 99-3793 (Appeal # 3) herein

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION :No. :3:CV-97-242
v	FILED Scranton Jul 17 1998 Per m Deputy Clerk
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH Defendants	

MOTION FOR CLARIFICATION

Pursuant to Order Dated 22 July 1997,* herein attached; Plaintiffs wish Clarification as to time limit on proceeding with issues not yet addressed by the Court!

Inclosed and attached various documents confirming the Exhaustion of the Remedy of the Right to Appeal that opens the door to the Common Law Right to Remedy and the Primary issue of the Right to Trial by Jury having been denied to date. There was no Remedy in the Procedures before the Couts, only Recourse!

Respectfully submitted
Joseph R. Caterina s/s
Plaintiffs
Joseph R. Caterina et al

DATE: 17 July 98
US Sup Ct No 97-102
(1) Apx p 125a

*see (A-98) herein cont/

(Dkt Entry 5) filed 17 Jul 1998: Apx p 125a USCA, 3rd Cir No 99-3793 (Appeal # 3) herein cont.

MOTION FOR CLARIFICATION

Attachments with Motion:

1) Order dismissed Jul 22, 1997 (A-98) herein

2) Order petition rehearing denied US Sup Ct Jan 12, 1998, No 97-102 (A-94) herein

3) US Sup Ct Notification List (Dkt Entry 5) Apx p 128a

4) US Sup Ct No. 97-102 Petition Rehearing by Attorney Thomas M. Marsilio cover only. 1/n

5) Federal Civil Judicial Procedure and Rules Cover 1997 Edition and: Rule 38. Jury Trial Right VI Trials

Rule 38 (a)
"(a) Right Preserved. The right of trial by Jury as declared by the Seventh Amendment to the Constitution or as given by statute of the United States shall be preserved to the parties inviolate."

pages 180 and 181

1/n (Dkt Entry 6) was also filed on 7/17/1998; The Booklet US Sup Ct No. 97-102 Petition Rehearing-Order on Petition For Writ of Certiorari 134a

* All of the above attachments were filed on Jul 17 1998 with the Motion For Clarification in Civil Action No. 3: CV-97-242 (Dkt Entry 5) Apx p 125a

(Dkt Entry 4) filed Jul 22 1997; Apx p 124a USCA, 3rd Cr No. 99-3793 (Appeal # 3) herein also was USCA , 3rd Cr (Appeal #2 & #1) consolidated No. 99-3690 & No. 99-3689) denied

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs	:CIVIL ACTION :No. :3:CV-97-242 : :Filed :Harrisburg PA :Jul 22 1997 :Mary E Dandres :by jl s/s
v	
UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	:

O R D E R

AND NOW, this 22nd day of July, 1997, pursuant to an order entered in this case * on June 24, 1997, this action is dismissed without prejudice, and the clerk of court shall close the file.[1]

s/s
William W. Caldwell
United States Dist Judge

[1] Plaintiffs have notified us that they have filed a petition for writ of certiorari in the Supreme Court of the United States, from an action of the Surpeme Court of Pennsylvania. Pendency of related matters in other courts provides no basis for failure to comply with the requirements for service of the complaint in this action. In this regard, the proofs of service, filed July 17, 1997, dealing with their petition in the U.S. Supreme Court, cannot be considered service in this case.
*see (A-99, & A-100)herein

(Dkt Entry 3) filed Jul 9 1997; Apx p 18a,19a USCA,3rd Cr No. 99-3793 (Appeal # 3) herein also part USCA,3rd Cr Nos 99-3690, 99-3689. (Appeals #2 & #1) denied

To: Judge William W. Caldwell

PLAINTIFFS REPLY ON 8 JULY 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs vs. UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	:Reply filed in : SCRANTON :JUL 09 1997 : s/s ta 10:50am :Per :Deputy Clerk :Civil Action :No. 3:CV-97-242 : FILED :HARRISBURG PA : Jun 24 1997 :Mary E DANDREA Per ji Clerk

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 18, 1997, plaintiffs filed a civil rights action against the Unified Judicial System of the Commonwealth of Pennsylvania and related parties.[1] Since that date no return of service has been filed by plaintiffs, showing that they have

[1] The identities of some of the related parties are not fully stated in plaintiffs' pro se complaint.

(Dkt Entry 3) filed Jul 9 1997; Apx p 18a,19a
USCA,3rd Cr No. 99-3793 (Appeal # 3) herein
Plaintiffs Reply on 8 July 1997 (cont)
served the defendants in the manner required by the Federal Rules of Civil Procedures (See Rule 4).

Rule 4(m) provides that if service of the summons and complaint is not made upon a defendant within 120 days from filing, the court shall dismiss the action as to that defendant.

Accordingly, plaintiffs are hereby notified that unless the summons and complaint are properly served on said defendants on or before July 18, 1997, and a return of service filed by said date, this action will be dismissed, without prejudice, as to any defendant who is not so served.

William W. Caldwell s/s
United States District Judge

Date: June 24, 1997 see (Dkt Entry 2)
Apx p 16a,17a

Plaintiffs Reply 8 July 1997 No 3:CV-97-242

TO THE COURT:

The inclosed timely filed Writ of Certiorari by Attorney Thomas M Marsilio with the Supreme Court of the United States on 15 April 1997 on an important issue of Federal Law of first impression must be decided before proceeding.

This Court, it is suggested, should treat this as an automatic '<u>supersedeas</u>' concerning the above action and Order.

Respectfully submitted,
s/s
Joseph R. Caterina Plaintiffs et a

Date: 8 July 1997

Incls: US Sup Ct Writ of Cert
Caterina et al v Blakely et al
Filed 15 April 1997 Oct Term Apx p 19a

(Dkt Entry 2) filed Jun 24 1997; Apx p 16a,17a USCA,3rd Cr No. 99-3793 (Appeal # 3) herein also part USCA,3rd Cr Nos 99-3690,99-3689 . (Appeals #2 & #1) denied

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH R. CATERINA, FRANCES CATERINA, EMMETT CATERINA, CLARA CATERINA, Plaintiffs vs. UNIFIED JUDICIAL SYSTEM OF THE COMMONWEALTH OF PA and RELATED PARTIES; LACKAWANNA COUNTY REDEVELOPMENT AUTHORITY; PA GENERAL STATE AUTHORITY; BLAKELY BOROUGH; Defendants	:CIVIL ACTION :No. :3:CV-97-242 FILED :HARRISBURG PA JUN 24 1997 :Mary E. DANDREA :CLERK :Per jn s/s

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 18, 1997, plaintiffs filed a civil rights action against the Unified Judicial System of the Commonwealth of Pennsylvania and related parties.[1] Since that date no return of service has been filed by plaintiffs, showing that they have

---

[1] The identities of some of the related parties are not fully stated in plaintiffs' pro se complaint.

* Note: Plaintiffs had inability to comply with this Order as defense FRAP Rule 2; (6) S. Stern & Co v U.S.; 331, F2d 310 (1963)"

(Dkt Entry 2) filed Jun 24 1997; Apx p 16a USCA,3rd Cr No. 99-3793 (Appeal # 3) herein also part USCA,3rd Cr Nos 99-3690,99-3689 (Appeals # 2 & #1) denied (cont.)

served the defendants in the manner required by the Federal Rules of Civil Procedures (See Rule 4).

Rule 4(m) provides that if service of the summons and complaint is not made upon a defendant within 120 days from filing, the court shall dismiss the action as to that defendant.

Accordingly, plaintiffs are hereby notified that unless the summons and complaint are properly served on said defendants on or before July 18, 1997, and a return of service filed by said date, this action will be dismissed, without prejudice, as to any defendant who is not so served.

William W. Caldwell s/s
United States District Judge

Date: June 24, 1997

(2)

Apx p 17a

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* Note: Plaintiffs are clearly being restranied permanently,(Ex Parte), by a Court that lacks jurisdiction, without probable cause! see (Sup Apx A 240a to 272a incl); without 'service'; no return of service is the theme of this case! (see Apx ps (A-48 to A-57) herein;(Sup Apx KK431a,454a)
Cite: 28 USC § 2254 (b)(c) "has exhausted the remedies available in the courts".
Cite: 28 USC § 1738 "any court" Art IV, Sec 1 Const US; see NIHIL DICIT Judgment' 3:MI-01-0189 filed USDC MD Pa:(A-58) herein (A-102)

BEST AVAILABLE COPY

Interconnected with(Dkt Entry 23; Apx p 228a, 229a; filed 13 Sept 99) USCA,3rd Cr No. 99-3793(Appeal # 3); (Appeal #2 & Appeal #1)*

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

August 6, 2001

Mr. Joseph R. Caterina
202 Kenyon Drive
Peckville, Pa 18452

Re: Joseph R. Caterina, Frances Caterina, Emmett Caterina, and Clara Caterina v. Unified Judicial System of Pennsylvania, et al.
No. 00-1390

Dear Mr. Caterina:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

William K Suter s/s
William K. Suter, Clerk

(1)

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* (Dkt Entry 14) filed Aug 13, 1999; Apx p 215a; USCA 3rd, No. 99-3690 (Appeal #2) & (Dkt Entry 13) filed Aug 13, 1999; Apx p 213a, No. 99-3689 (Appeal #1) consolidated

NOTE: USCA,3rd Cr No. 99-3793 (Appeal # 3) is now before the US Sup Ct herein see (A-80) herein

see(A-86) herein and see (A-87) herein

Note: Filed USDC, Md Pa with No 3:MI-01-0189 Oct 31 2001 Scranton. see (A-58) herein

APPLICATION FOR AN EXTENSION OF TIME TO FILE A WIRT OF CERTIOTARI

IN THE
SUPREME COURT OF THE UNITED STATES

Mr. Justice David H. Souter,
Associate Justice
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: Request for Extension of Time to file under Supreme Court Rule 10(a); 'conflict with court of appeals by decision on same important matter, Consideration Governing Review Part III Jurisdiction on Writ of Certiotari; adopted Jan 11, 1999, effective May 3, 1999
*ORDER dated July 25, 2001 & Opinion (Unreported-Not Precedential) by Alito, Ambro & Rosenn; Ct Judges USCA, 3rd Cr No. 99-3793 Caterina's et al v Unified Judicial System of Commonwealth of PA. and Related Parties, et al; and

*ORDER dated August 24, 2001 (Sur Petition For Panel Rehearing) USCA, 3rd Cr No. 99-3793 Caterina's et al v Unified Judicial System of Commonwealth of PA. and Realted Parties, et al, by Alito, Ambro, and Rossen Ct Judges; denied.

both ORDERS on Appeal from the United States District Court for the Middle District of Pennsylvania (M.D. Pa. CV, No. 97-CV-00242) District Judge, Honorable William W. Caldwell

Note: Interconnected with US Sup Ct. No. 00-1390; Petition Rehearing Denied August 6, 2001? ORDER Application No. 00A1004 (No. 00-1390) and prior Application No. 00A706 (No. 00-1390).

** Conflicting Order USCA,10th Cr Nos. 94-6415, 94-6417; W.E. Ensminger v Farm Credit Bank of Wichita et al, W.D. Oklahoma, date 7 April 1995 by Anderson, Baldock & Brorby; C. Judges.

Dear Mr. Justice Souter:

We again wish an extension of time within which to file another * Writ of Certiorari in the above referenced case the Maximum Time permitted and thank you for the prior Applications A1004 and A706 (US Sup Ct No 00-1390) an interconnected appeal. (Both ORDERS to be addressed separately*)

The reasons are basically the same as the prior Applications as follows:

(1)

Extension of Time cont.

1) Presently I am taking care of my ninety year old Dad and my 62 year old paralized Brother, who has a broken leg that the Hospital refused to repair as because he is paralized from the neck down,(He doesn't need that leg anyway)and was taking care of my Mom, who just died in the middle of all this on 30 June; for the past 1329 straight days, without stop, since I took this responsibility over in which my free time is limited to about 2 hours in the day and 2 hours in the evening to take care of other affairs, such as this litigation.

2) The death of my Mom has really caught us by surprise and is very difficult to get over presently!

3) We are still 'In Pro Se', to date.

4) The Court of Appeals should have granted us relief, but! failed to do so (under FRAP Rule 2)?

5) The events of 11 September 2001, along with all our other recent hardships, have us all in turnmoil!

6) The ORDERS of the USCA,3rd Cr are in direct conflict with the perfected Rights and Doctrines as were secured in the USCA, 10th Cr ORDER and Judgment ** herein above referenced!

Because of the above indicated personal hardships that have presently presented themselves; we would very much appreciate an extension of time appropriate under the circumstances in which to file another Writ of Certiorari, under US Sup Ct Rule 10(a) 'conflict Court of Appeals decisions'. Thank you.

s/s
Joseph R. Caterina, InProSe

s/s
Emmett Caterina,InProSe

s/s
Frances Caterina, In Pro Se

DATE: 24 Sept 2001

Question the Court:How could our recent case submitted 6 July 2001 have been Denied 6 August 2001,(cite US Sup Ct No 00-1390); when the Court was on summer recess, by the Clerk, when no staff member or Sup Ct Associate Justices could have even reviewed our pleadings? We did Not Petition the Clerk, we petitioned the Court and as such Court,(or their staff), has a constitutional responsibility to review such petitions!!!

An answer would be greatly appreciated. Thank you.

s/s
Joseph R. Caterina

Note: Filed USDC, MD Pa Scranton with No 3:MI-01-0189 Oct 31 2001 see (A-58)(A-104)herein

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

William K. Suter
Clerk of The Court

Area Code 202
479-3011

September 27, 2001

Mr. Joseph R. Caterina
202 Kenyon Drive
Peckville, PA. 18452

Re: Joseph R. Caterina, Frances Caterina, Emmett Caterina, and Clara Caterina
v. Unified Judicial System of Pennsylvania, et al.
Application No. 01A286

Dear Mr. Caterina:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Souter, who on September 27, 2001, extended the time to and including January 21, 2002.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Souter, Clerk
By s/s
Melissa A. Blalock
Assistant Clerk

NOTIFICATION LIST

Mr. Joseph R. Caterina
202 Kenyon Drive
Peckville, PA 18452

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543-0001

William K. Suter
Clerk of The Court

Area Code 202
479-3011

NOTIFICATION LIST

Mr. Mike Fisher
15th Floor, Strawberry Square
Harrisburg, PA 17120

Mr. Jose E. Morales
PA. Dept of General Services
603 North Office Building
Harrisburg, PA 17125

Mr. Edwin A. Abrahamsen
205-207 N. Washington Avenue
Scranton, PA 18503

Clerk
United States Court of Appeals for
the Third Circuit
601 Market Street, Room 21400
Philadelphia, PA 19106

same as (A-103) herein

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

August 6, 2001

Mr. Joseph R. Caterina
202 Kenyon Drive
Peckville, PA 18452

Re: Joseph R. Caterina, Frances Caterina, Emmett Caterina, and Clara Caterina
v. Unified Judicial System of Pennsylvania, et al.
No. 00-1390

Dear Mr. Caterina:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Sincerely,

s/s
William K. Suter, Clerk

Note: referenced herein bottom (A-81) (Appeals #2 and #1) US Sup Ct No. 00-1390 intertwined/(Appeal # 3) herein